# ANNUAL REPORT

## OFFICE OF THE POLICE COMPLAINT COMMISSIONER

*British Columbia, Canada*

2015/2016

integrity independence excellence

Office of the Police Complaint Commissioner (2016)

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Office of the
Police Complaint Commissioner

British Columbia, Canada

August 2016

The Honourable Linda Reid
Speaker of the Legislative Assembly
Parliament Buildings, Room 207
Victoria, BC V8V 1X4

Dear Madam Speaker:

It is my honour to present to you and to the members of the Legislative Assembly the 2015/2016 Annual Report for the Office of the Police Complaint Commissioner.

This report has been prepared in accordance with section 51.1(1) of the *Police Act*, RSBC 1996, c.367.

Yours truly,

Stan T. Lowe
Police Complaint Commissioner

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Police Complaint Commissioner

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## THE YEAR IN NUMBERS

FILES OPENED

**1,230**

530

REGISTERED COMPLAINTS RECEIVED

APPOINTED RETIRED JUDGE TO REVIEW MATTERS

3

46%

REGISTERED COMPLAINTS RECEIVED THROUGH THE OPCC WEBSITE

RECOMMENDATIONS TO POLICE BOARDS

7

NUMBER OF INVESTIGATIONS ORDERED

50

14%

INCREASE IN NUMBER OF FILES OPENED COMPARED TO LAST YEAR

ALLEGATIONS CONCLUDED

777

# TABLE OF CONTENTS


Commissioner's Message ..... 2

About the OPCC

- Mandate, Mission, Vision and Guiding Principles ..... 3
- Serving the Public ..... 4
- Our Work ..... 5
- Police Act Requirements ..... 6
- Jurisdiction ..... 8
- Other Agencies ..... 9
- The Civilian Component ..... 10
- OPCC Structure ..... 11
- Outreach & Education ..... 12
- Highlights ..... 14

The Complaint Process

- What is a Police Act Complaint? ..... 15
- Admissibility Reviews ..... 18
- Alternative Dispute Resolution ..... 19
- Discontinuations ..... 20
- Corrective and Disciplinary Measures ..... 20
- Investigations ..... 20

Recommendations to Police Boards - Summaries ..... 22

Case Studies ..... 24

Substantiated Allegation Summaries ..... 36

Statistics

- Introduction ..... 45
- Files Opened ..... 45
- Complaint Categories and Types ..... 47
- Admissibility ..... 50
- Allegations Concluded ..... 55
- Alternative Dispute Resolution ..... 58
- Reportable Injuries ..... 59

Resources ..... 61

Appendix: Recommendations to Police Boards ..... 62

# COMMISSIONER'S MESSAGE

This past year has been both exciting and challenging as we implemented a "re-visioning" plan which focused on consistency in our own internal business practices, as well as developing a strategic plan for the next four years.

We have provided a number of comprehensive recommendations to government for consideration to improve the oversight process, both substantively and procedurally, and to clearly define the jurisdiction of this office and the stakeholders engaged in the process

Alternative Dispute Resolution (ADR) figures prominently in our recommendations to government, as well as in our strategic planning.

The use of ADR is in keeping with the "Canadian Identity" of community policing where the focus is on repairing and maintaining a positive relationship between police and the public it serves. ADR remains a legacy initiative during my tenure as Commissioner.

While this has been a relatively tranquil year in terms of *Police Act* adjudications, the Courts have been busy with a flurry of activity involving in the interpretation of the Act in terms of procedure and jurisdiction. With the assistance of the courts and government, we are progressing through the growing pains associated with the legislation passed by the Legislative Assembly in March 2010.

I appreciate the significant support provided by the Legislative Assembly over the years as their assistance and legislative vision has made British Columbia a leader in the landscape of oversight of law enforcement in Canada. With a legislative "fine tuning" to the current oversight system, the statutory scheme will continue to enhance public confidence in the investigation of police conduct and the administration of police discipline.

I am very privileged to work alongside a staff of committed public servants who strive hard in their work to promote public and stakeholder confidence in the oversight system in this province.

Stan T. Lowe
Police Complaint Commissioner

# ABOUT THE OPCC

## Mandate

The Office of the Police Complaint Commissioner (OPCC) is a civilian, independent office of the Legislature which oversees and monitors complaints and investigations involving municipal police in British Columbia and is responsible for the administration of discipline and proceedings under the *Police Act*.

The OPCC performs a gatekeeping function by determining the admissibility of complaints received from the public, initiating investigations and, when appropriate, referring matters for adjudicative review. The OPCC ensures that investigations by police agencies under the *Police Act* are thorough and professional and are undertaken with impartiality and fairness to all parties involved.

The OPCC maintains records of all police complaints and *Police Act* investigations involving municipal police officers and the investigation outcomes. The office compiles statistical information and reports regularly to the public about these complaints and investigations. The Police Complaint Commissioner (the Commissioner) is responsible for advising, informing and assisting all parties involved in the complaint process; this includes complainants, police officers, discipline authorities, police boards and adjudicators appointed under the *Police Act*.

## Mission

The Office of the Police Complaint Commissioner promotes accountable policing within our communities and enhances public confidence in law enforcement through impartial, transparent civilian oversight.

## Vision

To engage in effective civilian oversight that provides accountability and builds public confidence in policing.

## Guiding Principles

*Integrity*

We act fairly and honestly in our oversight of the complaint process involving municipal police in British Columbia while ensuring a principled and just approach in arriving at decisions.

*Independence*

As an independent office of the Legislature, we serve the public objectively, impartially and free from any improper influence or interference.

*Excellence*

We are committed to excellence in our work while promoting courage and perseverance in our staff. We recognize that it is outstanding and dedicated people, working as a team, who make our mission and values a reality.

*Did you know?*
*The OPCC opened 1,230 files last year*

# SERVING THE PUBLIC INTEREST

## Who We Are

The OPCC is an independent office of the Legislature. What this means is that we are independent of government and police. We are an organization staffed by a team of dedicated civilian employees with a range of backgrounds from policing, law, regulation and academia.

## What We Do

The OPCC is the province's independent civilian oversight agency that provides an accessible way for the public to voice their concerns about the conduct of any municipal police officer or department.

Our office determines the admissibility of all complaints filed against municipal police officers and forwards the complaint to the respective police department for investigation. We also can independently order an investigation into an incident that comes to our attention. While investigations into police misconduct are completed by the police, our office adds a layer of accountability and transparency to the complaint process by ensuring that investigations into police misconduct are both thorough and competent. If there are areas of deficiency, our office can either recommend or direct further investigative steps or follow-up. Our office can also determine whether it is in the public interest to direct a complaint to be investigated by an external police department or whether the decision maker should be a Chief Constable or other high ranking member from an external police department. We review all police misconduct investigations and decisions. If we disagree with a finding of no misconduct then we can forward the matter for review by a retired judge. Our office is responsible for ensuring compliance with Part 11 – Misconduct, Complaints, Investigations, Discipline and Proceedings, of the *Police Act*.

In addition to the above mentioned roles, the OPCC can make recommendations to police boards for improvements to the manner in which they deliver their police services to the public in British Columbia, such as recommendations for policy creation or amendment. We can also make recommendations for improvements to the *Police Act*. We are committed to ensuring that the police complaint process in British Columbia continues to improve and meet the needs of both the public and policing community.

## Who We Serve

We serve all British Columbians and all parties involved in the complaint process.

*To learn more about the OPCC, please visit our website at www.opcc.bc.ca.*

# OUR WORK

## Public Trust

The primary purpose of the OPCC is to build and maintain the public's confidence in the police complaints system in British Columbia. The office does this by providing independent and impartial civilian oversight of investigations into police misconduct.

## Commissioner

The Police Complaint Commissioner is an independent Officer of the Legislature. He oversees the police complaint system and investigations into police misconduct and reports regularly to the public.

He establishes guidelines on how complaints are to be handled. He has the authority to appoint retired judges to Public Hearings and establishes procedures for mediation and informal resolution.

## Oversight

We actively monitor and oversee police misconduct investigations as they are investigated. Police departments are required to send their investigative materials to our office for review.

## Legislation

The OPCC's work is guided by the BC *Police Act*. The Commissioner can make recommendations to government to improve the *Police Act* with respect to police oversight.

## Intake Services

The Intake Coordinator, supported by the Administrative Assistant, responds to complaints and inquiries received in any form. They can also connect complainants with one of our many support agencies to provide assistance during the complaint investigation process.

## Research

The OPCC will be embarking on new research initiatives in the area of police oversight. We are facilitating a research project between the School of Criminology at Simon Fraser University and the Canadian Association of Civilian Oversight of Law Enforcement to begin a new and exciting oversight study in the area of Alternative Dispute Resolution.

## Police Board Recommendations

The Commissioner can make recommendations to municipal police boards on how policing services are delivered to the public and how services and policies can be enhanced. Efforts are made to ensure that these recommendations are implemented within a reasonable timeframe.

## Adjudication

When the Commissioner disagrees with a finding, he can appoint a retired judge to review the matter. Retired judges work at arms-length from the OPCC to ensure their decisions are made independently and without interference. These reviews can be a paper review of the matter or an in-person hearing where witnesses are called to testify.

## Stakeholder Engagement

The OPCC has a broad range of stakeholders. We strive to keep them informed of our role and services. We recognize that our stakeholders have individual, diverse and sometimes conflicting needs. Our stakeholders include: complainants and their advocates; municipal police bodies; adjudicators; and government.

*What guides the staff of the OPCC?*

Integrity • Independence • Excellence

# POLICE ACT REQUIREMENTS

## The Police Complaint Commissioner is ***required*** by the *Police Act* to:

1. Establish guidelines to be followed with respect to the receiving and handling of registered complaints and questions or concerns.

2. Establish forms to be used for registered complaints, mandatory investigations and by members of the public who have questions or concerns.

3. Establish and maintain a record of each complaint and investigation, including all supporting documents.

4. Compile statistical information regarding complaint records, including:
   a. demographic information;
   b. number and frequency of complaints, types or classes of complaints and the outcomes or resolutions; and
   c. trends in relation to police complaints.

5. Report regularly to the public about complaints, complaint dispositions and the complaint process. Such reports must be published at least annually and be posted on a publicly accessible website.

6. Develop and provide outreach programs and services to inform and educate the public on the police complaint process and the services provided by the OPCC, with special consideration and attention to addressing the particular informational needs of British Columbia's diverse communities.

7. Establish and make available to the public a list of support groups and neutral dispute resolution service providers and agencies that may assist complainants with informally resolving or mediating their complaints when appropriate.

8. Inform, advise and assist the public, complainants, police officers, discipline authorities, police boards and adjudicators with the complaint process.

9. Accept and consider comments from any interested party regarding the administration of the police complaint process.

10. Make recommendations for the improvement of the police complaint process in the Annual Report.

11. Establish procedures for mediation and guidelines for informal resolutions of public trust complaints.

*Did you know?*
*You can find brochures and other resources on our website to learn more about the OPCC as well as to assist you with registering a complaint.*
*www.opcc.bc.ca*

## The Police Complaint Commissioner ***may*** also do the following:

- Report on any matter related to the functions of the Commissioner.
- Engage in or commission research on any matter relating to the police complaint process.
- Make recommendations to police boards about policies or procedures on factors that gave rise to a complaint.
- Make recommendations to the Director of Police Services or the Solicitor General that a review or audit be undertaken to assist police in developing training or other programs designed to prevent the recurrence of problems revealed by the complaint process.

  Make recommendations to the Director of Police Services to exercise one or more of their legislatively-appointed functions in relation to a service or policy complaint.
- Make recommendations to the Solicitor General for a public inquiry under the *Public Inquiry Act* if there are reasonable grounds to believe:
  1. the issues supporting an inquiry are so serious or widespread that a public inquiry is necessary in the public interest; or
  2. an investigation conducted under Part 11 of the *Police Act*, even if followed by a Public Hearing or Review on the Record, would be too limited in scope, and powers granted under the *Public Inquiry Act* are needed.
- Consult with and advise contemporaries in other Canadian jurisdictions or with the Royal Canadian Mounted Police.

# JURISDICTION

The Office of the Police Complaint Commissioner oversees the handling of complaints involving the following municipal police departments:

## Mainland

Abbotsford
Delta
Nelson
New Westminster
Port Moody
South Coast BC Transportation Authority Police Service
Stl'atl'imx Tribal Police
Vancouver
West Vancouver
Combined Forces Special Enforcement Unit of British Columbia (Members of the Organized Crime Agency of BC)

## Vancouver Island

Central Saanich
Oak Bay
Saanich
Victoria

Beginning August 1, 2016, jurisdiction for complaints involving **Special Municipal Constables** will be transferred to the OPCC.

The Commissioner does not have jurisdiction over the handling of complaints involving members of the Royal Canadian Mounted Police (RCMP). The *Royal Canadian Mounted Police Act* provides a separate process for complaints regarding a member of the RCMP. Complainants are referred to the Civilian Review and Complaints Commission for the RCMP:

**Civilian Review and Complaints Commission for the RCMP**
National Intake Office
PO Box 1722, Station B
Ottawa, ON K1P 0B3
Toll-Free: 1-800-665-6878
Website: www.crcc-ccetp.gc.ca

*Did you know?*
*The OPCC is able to receive complaints in person, by mail, email, fax, or phone, or via our website at www.opcc.bc.ca.*

# OTHER AGENCIES

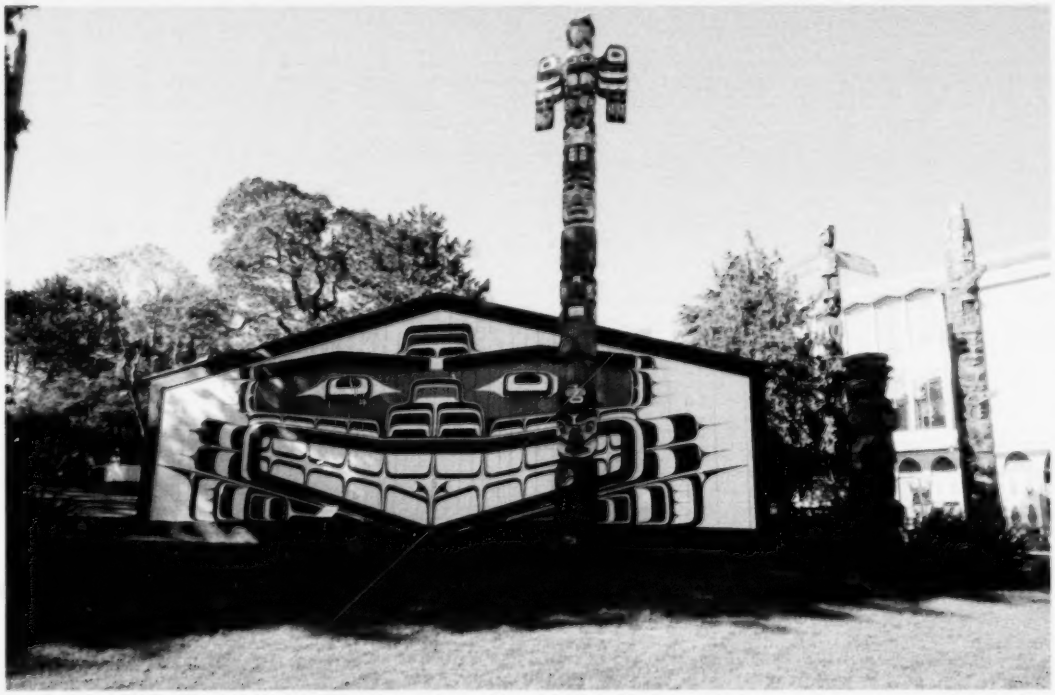
There are two other agencies in British Columbia responsible for either investigating police-involved incidents or providing civilian oversight of police complaint investigations.

## Independent Investigations Office (IIO)

The IIO is a civilian investigative body responsible for investigating officer-involved incidents that result in death or serious harm in order to determine whether or not an officer may have committed an offence. The IIO has jurisdiction over both municipal police agencies and the RCMP in British Columbia as well as officers appointed as Special Constables when they are exercising their authority as Special Constables. For more information about the IIO, please visit www.iiobc.ca.

## Civilian Review and Complaints Commission for the RCMP (CRCC)

The CRCC is an independent agency created to ensure that complaints about the conduct of RCMP members are examined fairly and impartially. The CRCC conducts reviews when complainants are not satisfied with the RCMP's handling of their complaint. The CRCC also conducts investigations, holds hearings, reports findings and makes recommendations for changes to national policing policies and practices. For more information about the CRCC, please visit www.crcc-ccetp.gc.ca.



# THE CIVILIAN COMPONENT

The work of the OPCC is unique in comparison to that of other independent offices of the Legislature. It provides oversight over municipal police officers who hold significant powers over citizens in the enforcement of the law created both federally and provincially.

OPCC analysts must possess a comprehensive understanding of the *Police Act* and associated processes and must also possess an expertise in the professional aspects of police operations. This policing expertise includes policing operations, policy, training and the conduct of all aspects of police investigations.

Recent commissions of inquiry and review involving police incidents and oversight headed by the Honourable William H. Davies, QC, the Honourable Thomas R. Braidwood, QC, and Ontario Ombudsman André Marin, have echoed a common theme: *the importance of civilian participation in the oversight and investigation of police-involved incidents.*

In terms of staffing, the OPCC will continue to rely upon the valuable contribution from former police officers to address its needs for expertise and knowledge in the field of policing. An internal training process is in place to ensure the development of this specialized knowledge and expertise amongst OPCC civilian staff members.

The OPCC's goal is to maintain the optimal balance between promoting the civilian nature of the office and ensuring its staff have the necessary skill sets in place to maintain excellence in their oversight work.

Approximately half of the staff engaged in decision-making roles have backgrounds outside of policing. Many are the product of an intensive in-house training program which began several years ago.

While civilian participation in oversight is an important goal for the OPCC, the Commissioner has set, as the office's operational focus, *organizational loyalty in our performance of the OPCC's important service to the public,* regardless of our staff's collective backgrounds.

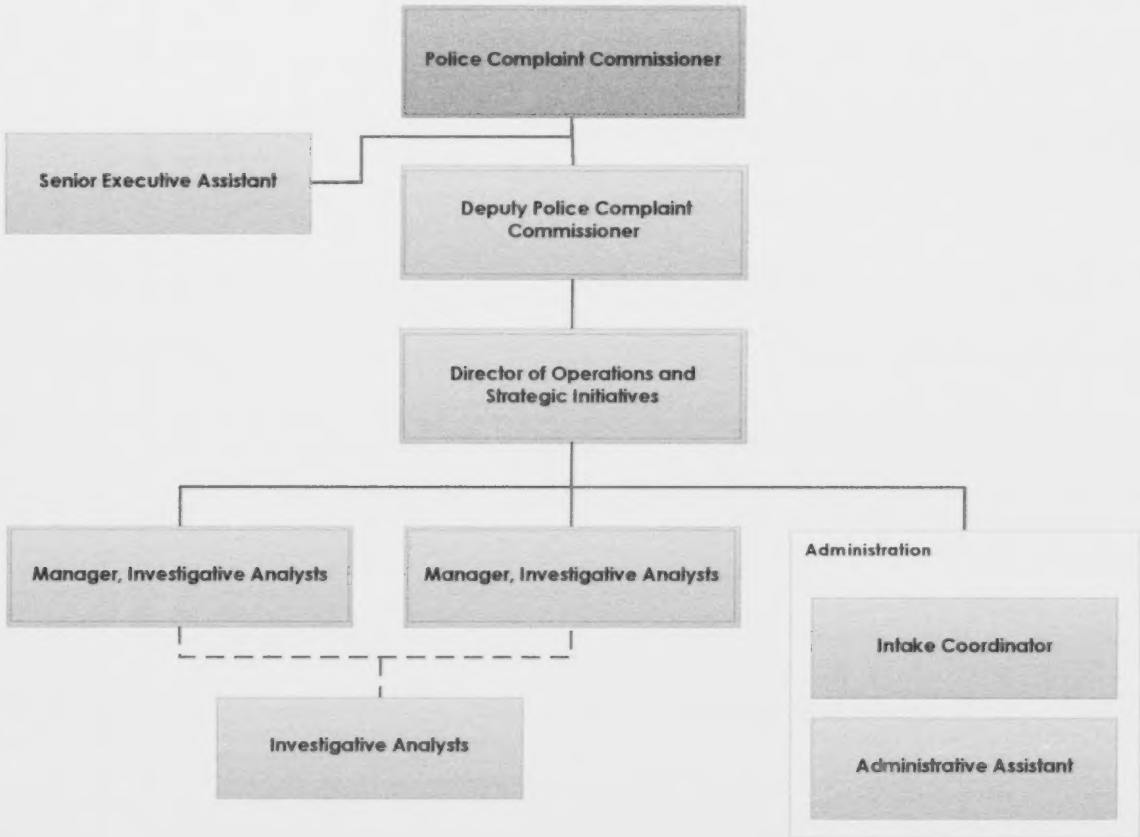
## Our Operations

At the heart of the OPCC is a dedicated group of people from both civilian and police backgrounds. To meet our objectives, our team includes staff with diverse backgrounds including training in the law, academia and policing.

We are proud of our paperless office and are privileged to work in a LEED-certified building which provides great facilities for our green commuters.

*Did you know?*
*We gain insight from engaging with those who have an interest in our work to inform and improve the service we deliver.*

# OPCC STRUCTURE



# OUTREACH & EDUCATION

Outreach and education are important tools that provide the OPCC with the opportunity to ensure that both members of the public and police understand the importance of civilian oversight of police complaints and how the complaint process works.

### Using Outreach to Increase Access to the Police Complaint Process

The Office of the Police Complaint Commissioner's outreach initiatives focused on creating pathways to the police complaint process for those members of the community who might not otherwise have access to our services. The OPCC formed partnerships with community-based organizations that were most likely to be a point of contact for individuals seeking support, assistance and/or searching for information about the police complaint process. By engaging in collaborative partnerships, we are able to improve accessibility to the police complaint process for those who may be hesitant or unable to directly access a police department or our office to file a complaint.

An important part of the police complaint process is resolving complaints using **Alternative Dispute Resolution** *(see page 19 for a full description)*. During the ADR process, a community support person may assist a complainant who may face challenges such as cultural, economic, age, language or physical barriers. Many community-based organizations recognize that there are those in our society who do not have a support system in place and have generously offered to assist those who fall within their mandate. A list of these support groups is available from the OPCC.

The OPCC would also like to recognize the following agencies that assist our office by disseminating information about the police complaint process, as well as by providing support to those who need it during the police complaint process:

Abbotsford Community Services
Atira Women's Resource Society
Battered Women's Support Services
BC Coalition of People with Disabilities
Carnegie Community Centre
Coast Mental Health
Covenant House
Cool Aid Society
Cridge Centre for the Family
Deltassist Family & Community Services
Downtown Eastside Women's Centre
Elizabeth Fry Society
First United Church
Frank Paul Society
Fraserside Community Services Society
Jewish Family Service Agency
John Howard Society of BC
Justice For Girls
Kettle Friendship Society
Knowledgeable Aboriginal Youth Assn
Men's Trauma Centre
Métis Nation British Columbia
MOSAIC
Motivation, Power & Achievement Society
Native Courtworker and Counselling Association of BC
Our Place Society
PACE Society
Pacific Community Resources Society
PEERS Victoria
Progressive Intercultural Community Services
Salvation Army
Shiloh Housing Society
Sixth Avenue United Church
South Vancouver Neighbourhood House
S.U.C.C.E.S.S.
UBC First Nations Legal Clinic
Urban Native Youth Association
Vancouver Aboriginal Friendship Centre Society
Vancouver Rape Relief
Victoria Disability Resource Centre
Victoria Immigrant and Refugee Centre Society
WISH
Women Against Violence Against Women Rape Crisis Centre
YWCA Crabtree Corner
YWCA Legal Educator

## Educational Outreach

This year, the OPCC delivered a number of educational presentations to academic institutions both on Vancouver Island and the Mainland to provide information on the complaint process, *Police Act* legislation and the role of civilian oversight in British Columbia. Each semester we meet with the University of Victoria Law Centre students to discuss the complaint process and how their organization could provide support to those who wish to file a police complaint. We also deliver an annual presentation to the interns enrolled in the BC Legislative Internship Program.

The OPCC's education initiatives for 2015/2016 also focused, in part, on training professional standards investigators and adjudicators on their role in the police complaint process.

Stakeholders, such as the BC Civil Liberties Association, have volunteered their time to meet with OPCC staff to provide information as to the type of matters their agencies handle.

The Police Complaint Commissioner meets regularly with police department executives and police unions to promote mutual understanding and information on best practices. As a member of the Canadian Association for the Civilian Oversight of Law Enforcement (CACOLE) the Police Complaint Commissioner consults with and advises persons who, in other jurisdictions of Canada or within the Royal Canadian Mounted Police, hold the same or a similar position. Each year the Police Complaint Commissioner assists in planning CACOLE's annual professional development conference that explores topics of relevance to those involved in civilian oversight of law enforcement.

In addition to providing educational presentations, the Police Complaint Commissioner continues to be part of the Advisory Committee on Provincial Policing Standards and the Provincial Committee on Cultural Diversity and Policing.

The OPCC will continue to create and maintain relationships with organizations, representatives and policing agencies to strengthen public and police confidence in our office and our role in providing impartial civilian oversight of complaints involving municipal police.

# HIGHLIGHTS

The OPCC is focusing on achieving greater effectiveness and efficiency in its work. The key features of our work over the past 12 months include:

### *Legislative Reform*

In March 2010, significant amendments to the *Police Act* came into force which brought about important changes to the police complaint process. The Commissioner is pleased with the progress that has been made by all stakeholders in terms of their adaptation to this improved police complaint process; however, this process has not been without its hurdles. A number of recommendations for changes to the *Police Act* were identified and have been submitted to the Minister of Justice in early 2015. We have included a summary of the high-priority recommended changes in our 2014/2015 annual report. A consultation session with the Policing and Security Branch regarding these changes was held in the fall of 2015.

### *Development of a Strategic Re-visioning Plan*

A number of internal and external initiatives involving our work have been developed as a result of our strategic re-visioning plan. The development of this plan included a philosophical review of the language used in our mandate, guiding principles and involved the creation of a mission and vision statement. The projects identified will serve as a road map for improved service to all our stakeholders over the next two to three years.

### *Continued Improvements Made to Internal Business Practices for OPCC Staff and Information Bulletins to Police Departments*

A number of improvements were made to the overall efficiency of OPCC internal business practices. Additional statutory templates have been developed to improve the consistency of our work product. A number of internal business practices were developed to ensure all analysts are employing a consistent approach to their oversight responsibilities. In addition, updates were made to existing information bulletins to police departments and also included the creation of new information bulletins to ensure police departments are aware of their statutory duties under the Act and to provide clarity to the application of certain sections of the *Police Act*.

### *Improvements to the In-house OPCC Analyst Training Program*

Modifications and additions have been made to our existing analyst training program. These included the development of lesson plans and relevant resources in the area of police powers, case law and the *Police Act*. A mentorship program has also been developed which pairs new analysts with more experienced staff who provide direct guidance and advice on assigned oversight files. This program is still under development as additional resources are compiled.

### *Expanding Jurisdiction*

The jurisdiction of the OPCC will be expanding on August 1, 2016. As ordered by the Lieutenant Governor of British Columbia on February 29, 2016, jurisdiction for the oversight of complaint investigations involving Special Municipal Constables will be transferred to the OPCC. This will have a significant impact on the office's workload as there are approximately 400 Special Municipal Constables in BC. They include Traffic Authority members, municipal Jail Guards, Community Safety members and auxiliary/reserve constables.

# THE COMPLAINT PROCESS

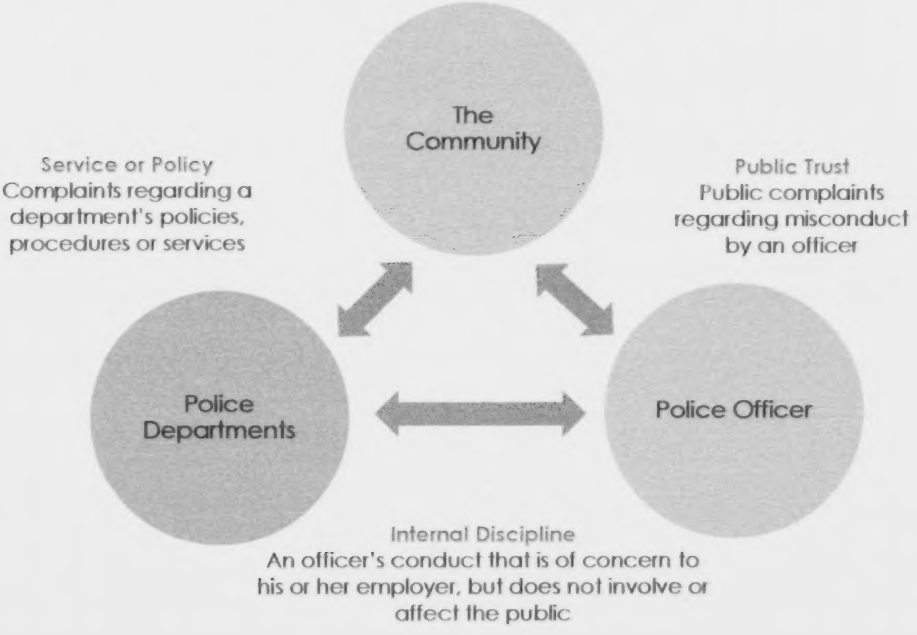
## What is a *Police Act* Complaint?

There are **three types** of complaints that are handled under Part 11 of the *Police Act*:

Public Trust complaints are about a police officer's conduct or actions that affect a citizen personally or that he or she has witnessed;

Service or Policy complaints are those regarding the quality of a police department's service to the community or regarding their operating policies; and

Internal Discipline complaints involve performance management issues or employer/employee concerns that do not affect members of the public.


The Community
Service or Policy
Complaints regarding a department's policies, procedures or services
Public Trust
Public complaints regarding misconduct by an officer
Police Departments
Police Officer
Internal Discipline
An officer's conduct that is of concern to his or her employer, but does not involve or affect the public

The complaint process may be initiated by three different routes:

Ordered Investigations
May be at the request of the department or by the Commissioner's own initiative
Mandatory External Investigations
As a result of serious injury or death while in the care or custody of the police
Registered Complaints
Formal complaints submitted by members of the public

An **ordered investigation** is initiated when information of potential professional misconduct is received but no complaint has been submitted by a member of the public. Between April 1, 2015, and March 31, 2016, there were 37 ordered investigations: 27 at the request of the department and 10 on the Commissioner's initiative as a result of information received.

The *Police Act* stipulates that all incidents that result in serious injury or death to individuals in the custody or care of the police, or as a result of operations of a department, must be reported to the OPCC and the Commissioner must order an investigation be conducted by an external agency. Between April 1, 2015, and March 31, 2016, there were 13 **mandatory external investigations** ordered.

By far, the most common method of initiating the complaint process is through complaints received from members of the public. A citizen may submit a complaint regarding an incident in which they were directly involved or witnessed. Between April 1, 2015, and March 31, 2016, there were 530 **registered complaints** received.

### What is considered professional misconduct by an officer?

The *Police Act* sets out categories of officer misconduct that, if proven, would constitute professional misconduct. The Act defines professional misconduct as follows:

***Conduct that constitutes a public trust offence which is an offence under the Criminal Code or of any provincial enactment, a conviction in respect of which does or is likely to:***

1. ***render an officer unfit to perform his or her duties as a police officer; or***
2. ***discredit the reputation of the department with which the officer is employed.***

According to the Act, any conduct that is considered to be harassment, coercion or intimidation of anyone making a complaint, or hindering, delaying, obstructing or interfering with a *Police Act* investigation, is conduct that constitutes misconduct.

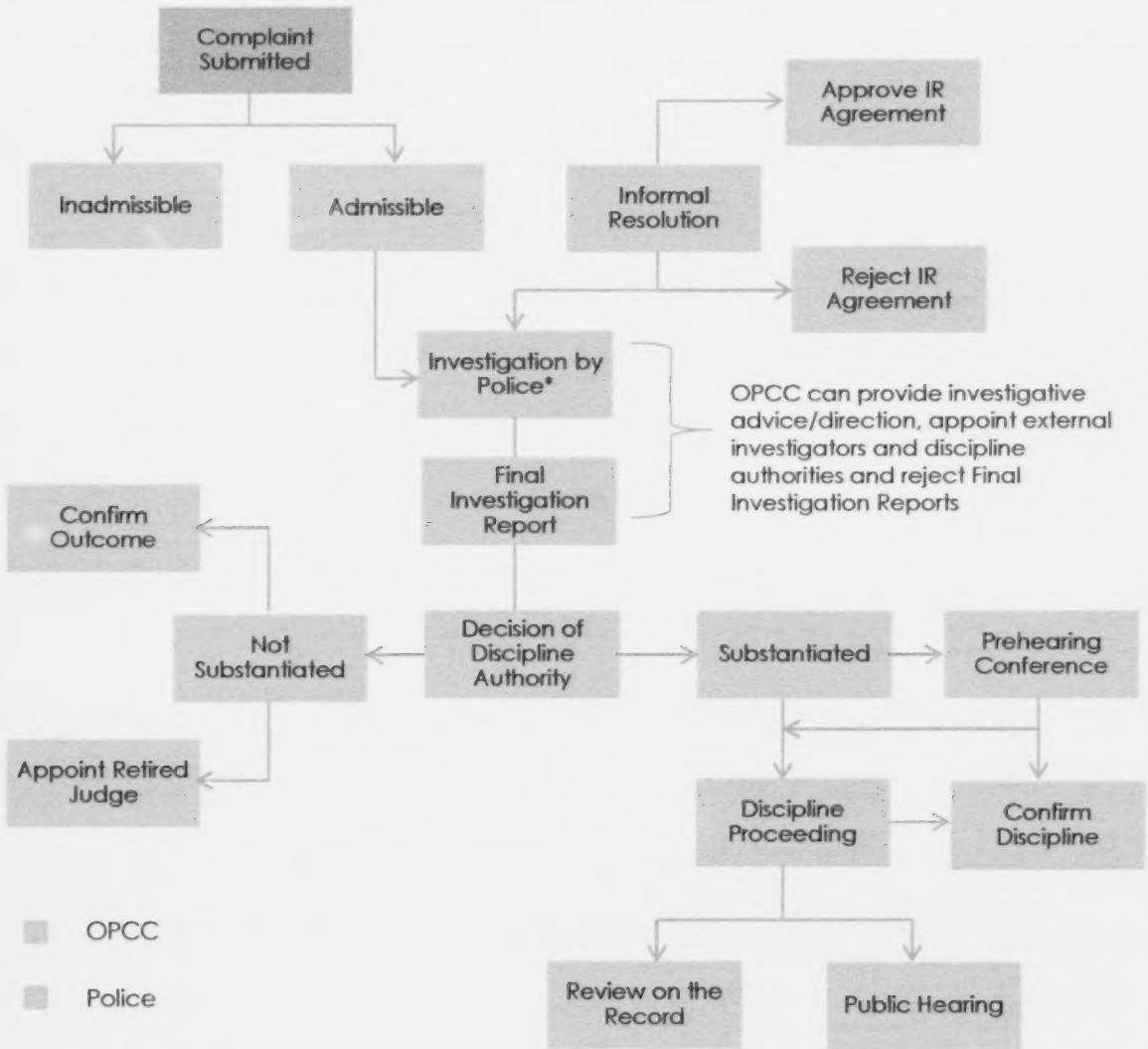
### Types of Police Misconduct

Once a complaint file is deemed admissible or an investigation is initiated, allegations of misconduct are identified against individual officers. The *Police Act* identifies and describes 13 public trust allegations:

1. *Abuse of Authority*
2. *Accessory to Misconduct*
3. *Corrupt Practice*
4. *Damage to Police Property*
5. *Damage to Property of Others*
6. *Deceit*
7. *Discourtesy*
8. *Discreditable Conduct*
9. *Improper Disclosure of Information*
10. *Improper Off-Duty Conduct*
11. *Improper Use or Care of Firearm*
12. *Misuse of Intoxicants*
13. *Neglect of Duty*

*Did you know?*
*The Police Complaint Commissioner initiated 13 Mandatory External investigations last year.*

This chart is an overview of the complaint process under the *Police Act*. The OPCC provides a gatekeeping role by conducting admissibility assessments of complaints and can appoint retired judges for the purposes of adjudicative review. This office also provides independent civilian oversight over misconduct investigations conducted by police.




*The OPCC can also order an investigation and municipal police departments can request that the OPCC initiate an investigation.

Figure 2: The complaint process flowchart

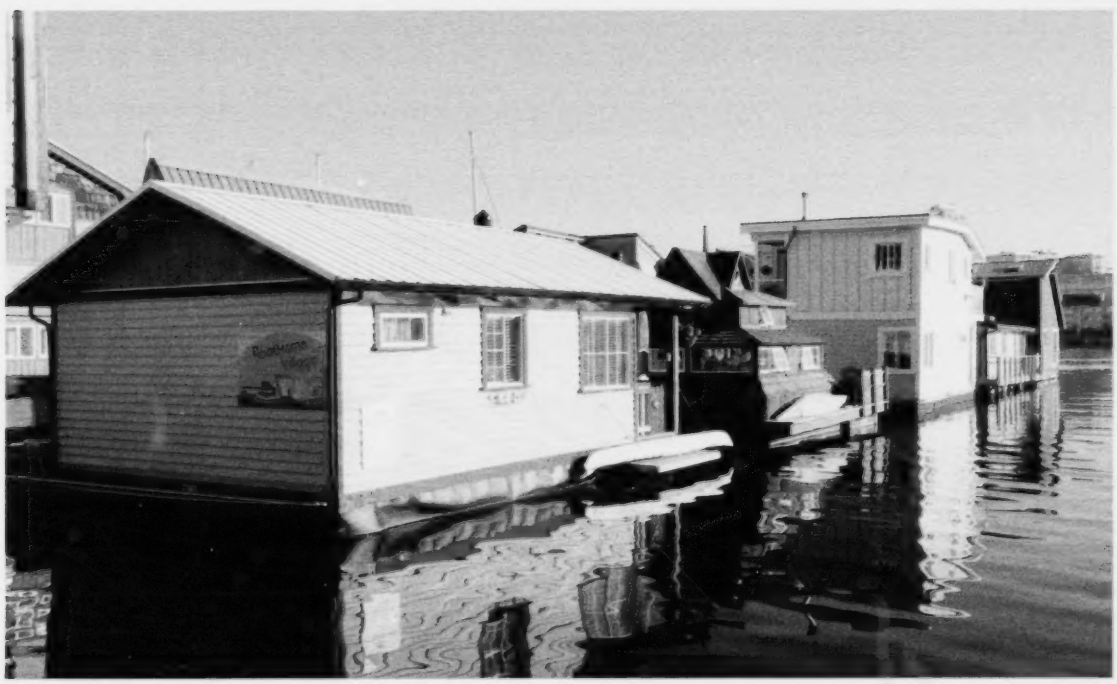
## ADMISSIBILITY REVIEWS

Since the revisions to the *Police Act* in 2010, all registered complaints must first be reviewed by the OPCC to determine whether they are admissible under Division 3 (Public Trust) of the *Police Act*.

In order for a complaint to be deemed admissible, it must:

1. contain an allegation of conduct that, if substantiated, would constitute misconduct as defined by the *Police Act*;
2. be filed within one year of the occurrence, except when the Commissioner considers that there are good reasons for extending the time limit and that an extension is not contrary to the public interest; and
3. not be frivolous or vexatious.

Once a complaint has been deemed admissible, it is forwarded to the Professional Standards Section of the originating police department for investigation.



# ALTERNATIVE DISPUTE RESOLUTION

Alternative Dispute Resolution (ADR) has been identified as a legacy initiative by the Commissioner. Resolving suitable complaints through communication, understanding and reconciliation results in a more meaningful resolution for the participants. ADR allows for repair and improvement of public confidence in police, one relationship at a time.

Depending on the particular circumstances, it may be determined that a complaint is suitable for informal resolution. A complaint can only be informally resolved if both the officer and the complainant agree to engage in the process and, ultimately, agree to the proposed resolution in writing. All agreements are reviewed by the OPCC to ensure the resolution is meaningful and appropriate based on the circumstances. Agreements reached are confidential, final and binding once confirmed by the Commissioner.

A complaint may also be suitable for resolution through the assistance of an independent professional mediator. Before a file can proceed to mediation, the Commissioner must first approve the mediation attempt to ensure the circumstances are appropriate for mediation. Mediations are completely confidential and agreements reached are final and binding as long as all the issues are resolved in accordance with the guidelines established for mediation.

Our experience has shown that there are a large number of complaints which are better suited to informal resolution or mediation, as opposed to a formal investigation which could take up to six months to reach a conclusion. By directly participating in the resolution and finding solutions to a conflict, the majority of complainants and officers come away from the process confirming that the experience resulted in a meaningful level of satisfaction. A successful informal resolution provides the opportunity to gain a greater understanding of the situation which gave rise to the complaint and both parties achieve a broader perspective on the issue. As a result, a greater degree of learning and relationship-building can be gained as compared to the outcome of a formal investigation. The OPCC encourages complainants and police at the front end to take full advantage of these options while ensuring the public interest is met.

During the review of all informal resolution agreements, complainants are contacted to ensure they are satisfied with the process. The responses from complainants have been positive and constructive. Feedback from complainants is very valuable to us as it assists us in improving our Alternative Dispute Resolution program.

In partnership with certified mediators, the OPCC has developed a conflict resolution training program specifically designed for Professional Standards investigators and frontline officers. Both members of municipal police departments and the RCMP have attended these training sessions. The participant feedback has been positive and we will continue to revise and improve the course content as necessary to meet the specific demands of resolving police complaints. We will be providing both an introductory ADR training course and an advanced ADR training course in 2016.

The OPCC will continue to promote and encourage the use of ADR by providing assistance to Professional Standards investigators wherever possible and guidance to complainants through the process. A number of support agencies are also available to complainants (for a full list, please visit www.opcc.bc.ca). Our office is able to facilitate the use of a community agency to provide support to complainants as they go through the informal resolution process.

Since the implementation of new legislation in April 2010, the number of allegations resolved through this process has grown substantially. Between April 1, 2015, and March 31, 2016, the OPCC reviewed and approved informal resolution agreements relating to 130 allegations of misconduct, or 19% of all allegations contained in registered complaints. This is an increase from the previous fiscal year where the OPCC reviewed and approved informal resolution agreements relating to 75 allegations of misconduct, or 16% of all allegations contained in registered complaints. The number of allegations resolved through ADR is consistently higher than under the previous legislation where only 7.8% of allegations were resolved informally.

Our goal is to lead the country in the Alternative Dispute Resolution of police complaints. Despite our efforts in promoting and encouraging ADR, it is our view that we require further changes to the *Police Act* to ensure that an ADR process is at least attempted for those allegations deemed appropriate.

## DISCONTINUATIONS

*Police Act* investigations may be discontinued if, after further information is obtained, it is established that:

1. further investigation is neither necessary nor reasonably practicable;
2. the complaint is frivolous or vexatious; or
3. the complaint was made knowing it was false or misleading.

## CORRECTIVE AND DISCIPLINARY MEASURES

The *Police Act* sets out the range of corrective and/or disciplinary measures to be imposed if the misconduct has been proven against the officer. The measures must include one or more of the following:

- Advice as to future conduct
- Verbal reprimand
- Written reprimand
- Participate in program/activity
- Undertake counselling or treatment
- Undertake training or re-training
- Work under close supervision
- Transfer/reassignment
- Suspension without pay (up to 30 days)
- Reduction in rank
- Dismissal

## INVESTIGATIONS

Investigations into allegations are conducted by a Professional Standards Investigator within a police department. Investigations into complaints are to be completed within six months and both the complainant and subject officer receive regular progress reports on the investigation. An OPCC investigative analyst is assigned to the file and contemporaneously monitors the investigation to ensure it is conducted professionally and addresses the concerns raised.

Once the investigation is complete, the investigator submits a *Final Investigation Report* to the discipline authority of the police department for a decision. A discipline authority is the Chief Constable of the

department, or a senior officer designated by the Chief Constable. Within 10 business days of receipt of the report, the discipline authority must provide his or her decision to the complainant, the subject officer and to the OPCC. The decision must set out whether the evidence appears to substantiate the allegation of misconduct and, if so, advise as to the range of proposed discipline or corrective measures.

A prehearing conference may be held allowing the officer the opportunity to admit the misconduct and accept the proposed discipline or corrective measures. If no agreement is reached or a prehearing conference is not held the matter then proceeds to a discipline proceeding before the discipline authority.

The complainant may request a review of the file if they disagree with the discipline authority's decision not to substantiate an allegation or if they disagree with the results of a discipline proceeding. An officer may also request a review if he or she disagrees with the outcome of a discipline proceeding. Also, if the penalty imposed is dismissal or a reduction in rank, the officer is entitled to a Public Hearing or, if the Commissioner deems it more appropriate, a Review on the Record.

The OPCC reviews all investigations and decisions to ensure the integrity of the process and to confirm that decisions are impartial and fair. If the Commissioner disagrees with a decision, he has three avenues of adjudicative review to choose from, depending on the unique circumstances of the matter. The Commissioner may:

appoint a new discipline authority (s.117)

Appoint a retired judge to review the Final Investigation Report and arrive at a decision as to whether the allegation appears to be substantiated by the evidence. If the finding is that the allegation appears to be substantiated, the retired judge then becomes the discipline authority for the matter. If the retired judge's finding is that the allegation is not substantiated, the matter is final and conclusive.

arrange a Review on the Record (s.141)

Arrange for a Review on the Record following a discipline proceeding. A retired judge is appointed to conduct a "paper review" of the entire matter, deliver a decision and, if substantiated, the corrective and/or disciplinary measures to be imposed. A retired judge's decision following a Review on the Record is final and conclusive and is not open to question or review in any court.

order a Public Hearing (s.143)

Order a Public Hearing following a discipline proceeding. A retired judge is appointed to sit as the adjudicator and review the evidence, hear sworn testimony and arrive at a decision. These hearings are open to the public and an adjudicator's decision is final and conclusive and may only be appealed on an issue of law.

# RECOMMENDATIONS TO POLICE BOARDS

## (SUMMARIES)

## Fiscal Year 2015/2016

ABBOTSFORD POLICE DEPARTMENT — Ordered Investigation 2014-9796

CPIC/PRIME queries

Following an investigation into an allegation that an officer had conducted an unauthorized search of police databases because of a family member's concern, the Commissioner found the department's lack of policy in this area to be of concern. The Commissioner recommended that the Police Board examine its policies with respect to providing greater clarity for its members regarding acceptable and unacceptable uses of police databases such as CPIC and/or PRIME. The department implemented a new policy and issued a directive to all staff that provided clarity in conducting database searches.

VANCOUVER POLICE DEPARTMENT — Service or Policy 2015-10584-01

Restaurant Watch Program

After being ejected from a Vancouver restaurant for a decades-old criminal charge, a member of the public filed a complaint regarding the Vancouver Police Department's (VPD) *Restaurant Watch* program (the Program). The complainant believes that the Program is fundamentally flawed, overly broad and affords too much discretion to officers. Specifically, the complainant believes that applying the Restaurant Watch program to his circumstances was an overreach of the program and did nothing to further its stated goals – the safety of patrons, staff, and the public.

Following an investigation, the police board dismissed the complaint and, as with all service or policy complaints, the OPCC reviewed the board's decision. As the VPD has no formal policy related to the Program, the OPCC identified the need for a clear and consistent policy, in particular to the areas of: jurisdiction; program criteria; application of the *Trespass Act*; and collection and use of patron information.

The OPCC acknowledges the fundamental principles of the Program as a public safety initiative. However, having reviewed this complaint as well as other similar complaints, the Commissioner has identified issues with respect to the inconsistent application of the Program by officers due to a lack of clear and objective policy to guide their approach.

At the time of this report's publication, this issue remained outstanding.

VANCOUVER POLICE DEPARTMENT — Registered Complaint 2015-10713

Mailing of Sensitive Materials

During an investigation regarding a sexual assault, a recorded interview of the victim was lost in transit between the department and another police agency. As a result, the victim had to be re-interviewed and highly sensitive information was lost. The officer involved advised that the VPD did not have policy relating to the handling of sensitive material in terms of the delivery of information. The Commissioner recommended to the Vancouver Police Board that the department should have a clear policy relating to the collection, storage, transmission and delivery of personal information. The Police Complaint Commissioner noted that the VPD has a dedicated Information and Privacy Unit with significant expertise to draw upon as a resource.

At the time of this report's publication, this issue remained outstanding.

ABBOTSFORD POLICE DEPARTMENT — Service or Policy 2015-10528

Property Disposal

Following an arrest, a member of the public had his personal property confiscated by the department. He was later transferred to a penitentiary and when he inquired about his property, he was informed that it had been destroyed according to policy which states that property will be destroyed after 90 days if not claimed.

Following a review by the department, which revealed that the department's property office had followed department policies with respect to the destruction of the personal property, the Commissioner made a recommendation to the police board that it re-examine the department's policy regarding the handling and

disposing of personal property, in particular when the owner of the property was in custody or incarcerated, to determine if the policy was adequate and appropriate, or if it required revision.

The department then issued an amended training directive which provided specific guidance and greater clarity to its members in relation to the safekeeping of prisoner effects. In addition, the department reimbursed the complainant monetarily for his loss.

VANCOUVER POLICE DEPARTMENT — Registered Complaint 2015-10304
Investigative Detention and Street Checks

Following a complaint investigation of a street check while on private property, the OPCC found that there was a lack of department policy, training and resources relating to the investigative detention of the complainant. The Commissioner made a recommendation to the Vancouver Police Board that it examine and reconsider any policies or procedures relating to the practice of conducting investigative detention and street checks in light of an increasing trend in complaint allegations involving the police practice of conducting street checks which were similar in nature to this case.

It was determined that the VPD did not have a street check policy, but that a draft policy was potentially under development by their Planning and Research section. Due to the frequency the members of the Vancouver Police Department come in contact with individuals of interest to them, the Commissioner feels that all members should be well trained and proficient in the lawful application of current statute and case law with respect to the detention of individuals for investigative purposes.

At the time of this report's publication, this issue remained outstanding.

VANCOUVER POLICE DEPARTMENT — Service or Policy 2015-10810
Marijuana Dispensaries

A complainant reported that the Vancouver Police Department was failing in its duty to maintain law and order by failing to shut down all marijuana dispensaries in the City of Vancouver. The Vancouver Police Board's Service & Policy Complaint Review Committee dismissed the complaint advising that the City of Vancouver had opted to regulate rather than close marijuana dispensaries. In this environment, and given the need to prioritize police resources, the Chief Constable determined that the VPD would take enforcement action only where there were overt public safety concerns. The Board determined that the existing Directive was sufficient in all the circumstances, and that it would be premature to develop a new policy, given the factors set out above and the changing landscape around the issue of marijuana. However, the Board will revisit this matter when the impact of the City's new bylaw and pending federal legislative changes become clearer.

The Commissioner recommended that a clear and objective policy to assist officers in the exercise of their discretion and discharge of their respective duties be created. However, the Board determined that the existing Directive was sufficient in all the circumstances, and that it would be premature to develop a new policy, given the factors set out above and the changing landscape around the issue of marijuana. The Board will revisit this matter when the impact of the City's new bylaw and pending federal legislative changes become clearer.

VICTORIA POLICE DEPARTMENT — Service or Policy 2015-10891
Marijuana Dispensaries

A complainant reported that the Victoria Police Department was failing in its duty to maintain law and order by failing to shut down all marijuana dispensaries in the City of Victoria. The Victoria and Esquimalt Police Board concluded that no additional policy was necessary at this time. The Commissioner recommended that a clear and objective policy to assist officers in the exercise of their discretion and discharge of their respective duties be created. The Board concluded that no additional policy was necessary at this time. The City of Victoria is in the process of developing a regulatory framework to address the operation of marijuana dispensaries and the Board will continue to revisit this matter as the challenging legal landscape, in particular the legalization of marijuana possession by the federal government, in this area further develops.

*A full account of the Commissioner's recommendations to municipal police boards can be found at the end of this report.*

# CASE STUDIES

The following complaint summaries are intended to provide samples of the variety of complaints which were concluded between April 1, 2015, and March 31, 2016. All substantiated complaints resulting in corrective or disciplinary measures are recorded on the officer's *Service Record of Discipline*.

### Registered Complaint 2016-11592
*No Misconduct*

The complainant reported that in the early morning hours, she and her husband heard a noise outside their residence. The complainant opened a window and asked who was there and was informed that it was a police officer looking for the complainant's stepson. The complainant took exception to the fact that the officer had bypassed a locked gate to enter the yard. The officer advised that he/she knocked on the gate but had not received a response.

The OPCC contacted the complainant to clarify details in her complaint. The complainant advised that officers attended her residence once every week or two weeks to ensure her stepson was abiding by his curfew. Normally, she stated, police knock on the gate or shine their flashlights at the house to get them to come to the gate. On this occasion, they found the officer in their yard. The next day, the complainant noticed that a picket from the fence was missing. The complainant speculated that the officer jumped the fence and knocked over the picket.

The OPCC contacted the complainant's husband who stated that he asked the officer if he/she had jumped the fence and the officer stated that he/she had not. The complainant's husband also advised the OPCC that he believed the officer was looking in their windows as their dog was barking ferociously. The OPCC reviewed a video provided by the complainant showing the latter part of the interaction with the officer and photographs of the fence and gate.

The police department provided a copy of the Conditional Sentence Order and Order Details Report in relation to the complainant's stepson. The Conditional Sentence Order is the document that permits a police officer to determine compliance with a curfew condition. Two conditions contained in the Order were:

> *Condition 7*: You are to obey a curfew and not be outside your place of residence from the hours of 10:00 pm to 5:00 am seven days a week, except with the written permission of the Supervisor.
>
> *Condition 8*: You are to present yourself in person to any peace officer attending your residence to determine compliance with the curfew condition.

Section 77(4) of the *Police Act* states, "It is not a disciplinary breach of public trust for a member to engage in conduct that is necessary in the proper performance of authorized police work."

It was the OPCC's view that the officer was in the legal execution of his/her duty when attending the complainant's residence to determine compliance of a curfew condition.

Section 4.1(c) of the *Trespass Act* states:

> A person may not be convicted of an offence under section 4 in relation to premises if the person's action or inaction, as applicable to the offence, was with (c) colour of right.

It was the OPCC's view that the officer had a colour of right to be on the complainant's property in order to ensure compliance with a curfew condition.

The information provided by the complainant suggested that the locked gate may have interfered with officer's attempt to conduct the curfew check. As the complainant advised in her complaint, the officer said he/she knocked on the gate but there was no answer.

The OPCC determined that the conduct described in these circumstances would not, if substantiated, constitute misconduct as defined pursuant to section 77 of the *Police Act*.

Regarding the complainant's husband's allegation that the officer may have been looking through the windows, he was unable to provide a sufficient factual foundation for this assertion. That allegation was found to be speculative in nature and, therefore, inadmissible.

*Did you know?*
*88 allegations were discontinued by the OPCC last year.*

### Registered Complaint – Various
*Frivolous/Vexatious*

The complainant forwarded several registered complaints to the OPCC on the same day. After review, it was determined that the complaints provided little information that would assist the OPCC in arriving at a principled decision regarding admissibility. For example, in one complaint, the complainant reported that he was followed by three officers while he was out for a walk. The complainant believed that the officers may have intended to harm him because of a book he had written. In another complaint the complainant advised that all officers were interfering with a political party.

In reviewing a complaint, our office may contact the police agency involved or the complainant to obtain further information that may assist the OPCC in arriving at a principled decision regarding the admissibility of the complaint. The OPCC is careful not to weigh the evidence at this stage, but in exercising our gatekeeping function, we must ensure we have considered all the relevant circumstances which provide an accurate context to the matter. As such, the OPCC made several attempts to contact the complainant for clarification of his concerns. All attempts were unsuccessful.

The OPCC was satisfied that the allegations lacked an air of reality and were, therefore, frivolous in nature. In addition, based upon a review of the complaints as a whole, the OPCC determined the complaints to be vexatious and were, therefore, not admissible pursuant to the *Police Act*.

The complainant was advised in the Notice of Inadmissibility that should he file further complaints with the OPCC they must be in relation to a municipal police officer, be filed within 12 months of the date of the incident and contain enough detail to warrant an assessment for admissibility by this office.

### Registered Complaint 2013-8359
*Withdrawn - Unsubstantiated - Policy Change*

Although the misconduct portion of this file was concluded in the previous fiscal year, the Commissioner made recommendations to the department's police board pursuant to section 177(4)(c) of the *Police Act*. The OPCC received the response to the Commissioner's recommendations this fiscal year.

As background, the OPCC received a registered complaint describing an incident where police seized a bag containing marijuana from the complainant's residence subsequent to his arrest. The marijuana was destroyed en route to the police station.

The complaint was determined to be admissible and forwarded on for investigation with the following potential misconduct identified:

1. *Abuse of Authority*, contrary to section 77(3)(a) of the *Police Act*, specifically unlawful seizure of property; and
2. *Neglect of Duty*, contrary to section 77(3)(m)(i) of the *Police Act*, specifically failure to properly account for property received in one's capacity as a member.

By way of a signed Notice of Withdrawal, the complainant subsequently withdrew his *Police Act* complaint. Subject to section 94 of the Act, the Commissioner must accept a complainant's withdrawal but may order an investigation into the matter under section 93 of the Act or continue to proceed with an ongoing investigation as if it had been initiated under section 93.

Based on the information contained in the complaint and the investigation materials provided to date, the Commissioner determined that it was in the public interest that the investigation be continued through to conclusion.

At the end of the investigation, the discipline authority determined that the allegation of *Abuse of Authority* with respect to the seizure of the marijuana was not supported by the evidence. The discipline authority found that the officers were in the lawful execution of their duties when they found the marijuana in plain view.

The discipline authority further determined, after considering all of the circumstances, the allegation of *Neglect of Duty* to be unsubstantiated. While the officer had a duty pursuant to department policy to document the seizure of the marijuana, the discipline authority noted that "there was a 'street practice' of disposing of small amounts of marijuana on the street that existed inside and outside the department".

Although the discipline authority disagreed with the officer's belief that the amount seized was trivial, he concluded that the department had not provided sufficient training on the issue and the policy was unclear. Therefore, "other reasonably prudent officers may have conducted themselves in a similar way in the circumstances." In the Notice of Decision, the discipline authority issued two directions:

1. That the officer receives advice as to his/her future conduct and that this incident be entered into his/her performance appraisal.

2. That department policy for the seizure of drugs for destruction be updated and that the Training Unit provide training to all operational members once the policy had been updated.

The OPCC's review of the investigation determined that the officers attended the complainant's residence to make an arrest on outstanding warrants. After the complainant was placed under arrest, he requested to enter his residence to retrieve a key. All involved parties agreed that the clear bag containing marijuana was in plain view and was seized at that time.

On the way to the police station, one of the officers exited the police cruiser and, in front of the complainant, poured the contents of the bag onto the concrete and squished it out with his/her boot. The officer did not document the seizure or destruction of the marijuana in the police report but did document it in his/her notebook.

When issuing the Conclusion of Proceedings, the Commissioner noted that the manner in which the officer disposed of the marijuana was not appropriate in terms of current policing standards.

Where a significant amount of marijuana has been seized pursuant to law, the marijuana should be treated as an exhibit and submitted to the property office as an exhibit or for destruction, dependent on the discretion of the seizing officer. Otherwise, a "practice" which lends itself to subjective differences will result in the inconsistent treatment of illegal drugs which raises public concern from the standpoint of accountability.

While the Commissioner agreed that based on the circumstances and lack of clear policy the conduct of the officer did not meet the threshold necessary to constitute misconduct, he was also of the view that the department's policy as it related to the handling of drugs needed to be updated.

Therefore, pursuant to section 177(4)(c) of the *Police Act*, the Commissioner recommended that the department's police board examine and create a specific policy with respect to the seizure of property that clearly outlined an officer's duties with respect to the documentation and disposal of seized marijuana.

On October 20, 2015, a new, comprehensive drug handling policy took effect and all sworn members and property section staff were advised by way of a Special Order Directive. A copy of the new policy was provided to the OPCC.

In relation to the discipline authority's recommendation that the officer receive advice to his/her future conduct and that this incident be recorded in his/her performance appraisal, the Commissioner advised that given that the *Police Act* is a complete code and that the allegations were found to have not been substantiated, the officer should not be subject to any corrective or disciplinary measures nor should any labour relations consequences be applied to a *Police Act* process.

### Registered Complaint 2016-11506-01
*Investigation Discontinued*

The complainant reported that an acquaintance leased a vehicle on his behalf, but he, the complainant, was responsible for the payments. The two parties subsequently had problems which resulted in the complainant being asked to return the vehicle. The complainant refused and, as a result, the acquaintance sent a text stating, "This is now considered a stolen vehicle and the police have been notified".

That same day, the complainant received a telephone call in relation to the matter from an officer whom the complainant advised had failed to provide a name or PIN number. The complainant claimed that during the telephone call, the officer was abusive, threatening, discriminatory and verbally forceful in his/her efforts to have the complainant return the vehicle.

The complaint was determined to be admissible and forwarded on for investigation with the following potential misconduct identified:

1. *Abuse of Authority*, contrary to section 77(3)(a) of the *Police Act*, specifically oppressive conduct towards a member of the public.

The investigation was initiated and, as part of that investigation, the professional standards investigator retrieved an audio recording of the telephone call in question. The professional standards investigator subsequently forwarded a *Request for Discontinuation* to the OPCC, advising that the allegations made by the complainant were not supported by the audio recording and that the complainant had made false and misleading allegations against the officer.

Pursuant to section 109(1)(b)(ii) of the *Police Act*, the Commissioner may discontinue an investigation initiated under Division 3 if, having regard to all the circumstances, he considers that the complaint was made with the knowledge that it was false or misleading.

The OPCC carefully reviewed the investigative materials collected to date, including the audio recording of the telephone call which was 13 minutes in length. Of note, the telephone call was not available to the OPCC at the time of the admissibility assessment of the complaint. After reviewing the audio recording, the OPCC noted that there was a clear divergence between the information reported by the complainant and the contents of the recorded telephone call.

Specifically, the most significant of the inconsistencies were as follows:

- The officer did provide name and rank at the onset of the phone call;
- The officer did not use profane language at any time in the course of the phone conversation; and
- The officer did not use language that could be objectively characterized as abusive, threatening, discriminatory or verbally forceful.

After reviewing all of the relevant materials, the OPCC determined that the complaint was made with the knowledge that it was false or misleading. The materials reviewed to date did not identify any conduct on the part of the officer which would constitute misconduct.

Accordingly, the Commissioner directed that the investigation into this complaint be discontinued pursuant to section 109(1)(b)(ii) of the *Police Act*.

### Registered Complaint 2015-10697

*Substantiated*

A townhouse strata council was in the process of replacing and repairing the cedar fencing within the property. The council selected the fencing company to perform the work, while the property management company managed the administrative tasks associated with the project. While there was no specific timeline for completion of the fencing work, the project was not completed within the timeframe residents expected.

An officer, who was a resident owner of a unit within the townhouse complex, contacted the property management company to complain about the extensive delay in completion of the fence work. During the conversation with the property management company, it was reported that the officer disclosed that a vehicle being driven by one of the contractors was uninsured and that one of the contractors had a criminal record. As a result of that conversation, the property management company contacted the strata council to enquire about the progress of the fence and to advise them of the background of one of the contractors.

A member of the strata council was concerned about the information being disclosed by the officer and contacted the officer's department. The department, in turn, forwarded the information to the OPCC as a registered complaint.

The complaint was determined to be admissible and forwarded on for investigation with the following potential misconduct identified:

1. *Improper Disclosure of Information* pursuant to section 77(3)(i)(i) of the *Police Act*, specifically, advising the property management company that a contractor had a criminal record and one of the vehicles was uninsured.
2. *Unauthorized Use of Police Facilities/Resources* pursuant to section 77(3)(c)(iv) of the *Police Act*, specifically, unauthorized search of CPIC/PRIME.

Following the *Police Act* investigation, the discipline authority determined that the evidence appeared to substantiate both allegations of misconduct and offered the officer a prehearing conference. At the prehearing conference, the officer acknowledged and admitted the defaults as they were alleged. An agreement was reached with respect to the proposed discipline.

1. *Improper Disclosure of Information* – Written reprimand.
2. *Unauthorized Use of Police Facilities/Resources* – One-day suspension without pay.

A report following the prehearing conference was forwarded to the OPCC for review. It was the OPCC's view that the issuance of a one-day suspension and a written reprimand fell on the lower end of the spectrum for disciplinary or corrective measures for this type of conduct, however, it was within the range of acceptable outcomes in the circumstances.

Therefore, the agreement reached at the prehearing conference was approved. The disciplinary or corrective measures were entered into the officer's Service Record of Discipline.

### Registered Complaint 2015-10308

*Unsubstantiated – Request for Section 117 Review*

The complainant reported that he was attacked by three men on his way home from work. The complainant reported that once police arrived, he was placed into a police vehicle while police spoke to the other parties. Police informed the complainant that he was too intoxicated to provide a statement and that he would be taken to jail until he was deemed to be sober. The complainant claimed that he had consumed no alcohol

whatsoever. Once released from custody, the complainant alleged that a 20 dollar bill was missing from his wallet.

The complaint was determined to be admissible and forwarded on for investigation with the following potential misconduct identified:

1. *Abuse of Authority*, pursuant to section 77(3)(a)(i) of the *Police Act*, specifically intentionally or recklessly making an arrest without good and sufficient cause.
2. *Neglect of Duty*, pursuant to section 77(3)(m)(i) of the *Police Act*, for allegedly failing to properly account for money received in one's capacity as a member.

At the completion of the *Police Act* investigation, the discipline authority determined that the evidence did not substantiate either allegation of misconduct. The complainant was provided a copy of the Final Investigation Report and the discipline authority's Notice of Decision and was informed that if he was dissatisfied, he could submit a written request to the Commissioner to exercise his authority under section 117 of the *Police Act* and appoint a retired judge to review the matter.

The OPCC subsequently received a section 117 request from the complainant. When making the request, the complainant advised, in part, that the police department had failed to provide concrete credible proof that he was intoxicated at the time of the incident. It is important to note that to promote accountability in the complaint process, all discipline authority decisions are reviewed by the OPCC, regardless of whether or not a request has been made.

Based on a review of the available evidence, the OPCC was satisfied that the discipline authority appropriately determined the allegation of *Abuse of Authority* to be unsubstantiated. Police officers may arrest a person found intoxicated in a public place.

Although the complainant reported that he had not consumed any alcohol, the arresting officers were satisfied that he was extremely intoxicated and described him as having "extremely poor balance...a strong smell of liquor on his breath...talking loudly non-stop...slurring his words...[and] his pupils were unusually dilated." One witness stated that the complainant was drunk and smelled strongly of alcohol. Another witness stated that the two main people in the fight were, "very intoxicated."

Both the arresting officer and the complainant agreed that the complainant was offered an Approved Screening Device to measure his intoxication level. However, the complainant had declined the offer.

It was the OPCC's view that the arrest of the complainant for being intoxicated in a public place did not rise to the level of misconduct under the *Police Act*.

Further, based on the available evidence, it was the OPCC's view that the evidence did not support the allegation of *Neglect of Duty*. Both officers denied seeing or taking a 20 dollar bill from the complainant. The cell block video showed coins being taken from the complainant but not bills. Therefore, the Commissioner determined that there was not a basis upon which to appoint a retired judge to review this matter.

### Ordered Investigation – Request by Department

*2014-9930 – Substantiated*

The police department advised the OPCC that a local business owner had reported that an officer had requested a financial loan and referenced his/her employment with the police department when making the request. In response to this information, the department's Human Resources Section became involved.

The officer in charge of the Human Resources Section spoke with the officer who admitted to attempting to obtain loans from various business owners and work colleagues. As a result of this information, the Human Resources Section served the officer with a Letter of Expectations that listed a number of conditions by which he/she agreed to abide. These conditions included: the officer having to develop and disclose to the department a financial plan that encompassed and addressed all debt; seeing a financial counselor to learn and develop financial management skills; attending psychological counselling; and not seeking or obtaining financial loans from co-workers or members of the community.

Subsequent to issuing the Letter of Expectations, the department received information from a new source reporting that the officer had asked him for financial assistance because the officer was behind on several payday loans. The department was of the view that the officer's contact with this individual was in direct contravention of the Letter of Expectations and requested an Order for Investigation pursuant to section 93(1) of the *Police Act*.

The Commissioner issued the Order for Investigation and was advised that during the investigation the officer was convicted of forgery, contrary to

section 367 of the *Criminal Code of Canada* for which he/she received an absolute discharge.

Following the *Police Act* investigation, the discipline authority determined that the evidence appeared to substantiate the following allegations of misconduct:

1. *Neglect of Duty* pursuant to section 77(3)(m)(iii) of the *Police Act*, specifically when the officer obtained loans from non-traditional lending sources after the implementation of a Letter of Expectations.
2. *Discreditable Conduct* pursuant to section 77(3)(h) of the *Police Act*, specifically when the officer attempted to solicit a loan because he/she was behind on payday loans.
3. *Discreditable Conduct* pursuant to section 77(3)(h) of the *Police Act*, specifically when the officer committed the criminal offence of forgery.

In accordance with the *Police Act*, where the discipline authority would be recommending dismissal, he or she cannot offer an officer a prehearing conference unless, in the Commissioner's opinion, it would not be contrary to the public interest.

As the discipline authority had been advised that the officer was tendering his/her resignation as a result of this investigation, it was the discipline authority's opinion that a prehearing conference could be offered in these circumstances. The Commissioner agreed.

The officer resigned prior to the prehearing conference. At the prehearing conference the officer indicated that he/she fully and unequivocally admitted to the misconduct and an agreement was reached with respect to the proposed discipline.

1. *Neglect of Duty* - Transfer or reassignment
2. *Discreditable Conduct* - Transfer or reassignment
3. *Discreditable Conduct* - Dismissal

A report following the prehearing conference was received and approved by the OPCC. The disciplinary or corrective measures were entered into the former officer's Service Record of Discipline.

### Ordered Investigation – Request by Department

*2012-7741 – Substantiated – Section 117*

The police department reported that an off-duty officer had registered two "warn" readings on an Approved Screening Device (ASD) when stopped at an impaired driving road block. The department requested an Order for Investigation pursuant to section 93(1) of the *Police Act*. An Order for Investigation was issued with the following potential misconduct identified:

1. *Discreditable Conduct* pursuant to section 77(3)(h) of the *Police Act*, specifically in relation to the officer having produced two warn readings on the ASD and being issued a three-day Immediate Roadside Prohibition (IRP).

During the investigation, the OPCC identified a second potential misconduct and issued an Amended Order for Investigation identifying the second potential misconduct:

2. *Discreditable Conduct* pursuant to section 77(3)(h) of the *Police Act*, specifically in relation to the officer identifying himself/herself as an officer and requesting the lesser enforcement of a 24-hour suspension as opposed to an Immediate Roadside Prohibition.

After reviewing the Final Investigation Report, the discipline authority determined that there was sufficient evidence to establish that the officer had committed the disciplinary default of *Discreditable Conduct* in relation to the allegation that the officer had consumed alcohol before operating a motor vehicle and subsequently registering two warn readings on the ASD. The discipline authority offered the officer a prehearing conference. An agreement was reached wherein the officer accepted responsibility for his/her actions and agreed to the following discipline corrective measures:

1. *Discreditable Conduct* – One-day suspension

The OPCC received a copy of the prehearing report and found that the one-day suspension without pay was within the range of acceptable discipline/corrective measures with respect to the circumstances of this case. Therefore, the agreement reached at the prehearing conference regarding the first count of *Discreditable Conduct* was approved.

However, the Commissioner disagreed with the discipline authority's determination that the second count of *Discreditable Conduct* in relation to the officer identifying himself/herself as a police officer and asking for a lesser enforcement to be unsubstantiated. The Commissioner, therefore, ordered a section 117 review in accordance with the *Police Act*. The retired judge responsible for conducting the section 117 review substantiated the second count of *Discreditable Conduct* and, as the new discipline authority, offered the officer a prehearing conference.

The officer's legal counsel disagreed that the prehearing conference authority should be the retired judge who conducted the section 117 review, but rather should be a senior member of the department. A prehearing conference was then held by a senior member of the department.

The prehearing conference report indicated that the officer agreed to accept the disciplinary measure of:

2. *Discreditable Conduct* – One-day suspension

The agreement reached at the prehearing conference was rejected by the Commissioner pursuant to section 120(16) of the *Police Act*, in part because the Commissioner believed that the senior member of the department lacked the jurisdiction to act as the prehearing conference authority.

The officer's counsel advised the OPCC that they had petitioned for a judicial review on the issue of who can act as the prehearing conference authority following a section 117 review. The officer's counsel further advised that he was seeking a final order of prohibition and a declaration, as well as an interim order pending hearing.

Due to the lengthy delay in getting this matter before the British Columbia Supreme Court, it was the view of the OPCC that it should be concluded in the interest of fairness to the officer. Therefore, while the OPCC did not agree with the officer's position as to whom the prehearing conference authority should be, the agreement reached at the prehearing conference with respect to second count of *Discreditable Conduct* was approved and the officer's Service Record of Discipline was updated.

The OPCC has since asked government for legislative assistance to clarify the language in the *Police Act*. In the interim, the OPCC has developed a procedure so that when a department's decision to not substantiate an allegation of misconduct is found to be incorrect, the matter will not be returned to the officer's department for a prehearing conference.

The officer subsequently filed a Notice of Discontinuance in relation to the judicial review request.

### Ordered Investigation – Initiated by the Commissioner

2013-8599 – *Substantiated – Review on the Record*

A professional standards investigator encountered issues with the integrity of an officer's notes and the information he/she provided during interviews while the subject of a *Police Act* investigation. In the Final Investigation Report related to that investigation, the investigator recommended that a formal investigation be commenced into these issues.

After reviewing the information, the Commissioner ordered an investigation pursuant to section 93(1) of the *Police Act*.

At the completion of the investigation, the discipline authority reviewed the Final Investigation Report and exercised his discretion under section 98(9) of the *Police Act* and directed the matter be further investigated and identified the investigative steps to be completed.

When the further investigative steps were completed, the discipline authority reviewed the Final Investigation Report and the further investigation material and determined that the following allegations had been substantiated:

1. Two Counts of *Deceit* – contrary to section 77(3)(f)(i)(B) of the *Police Act*, specifically, that the officer created notes for two police files which he/she misrepresented as having been made at the time the incidents occurred or shortly thereafter.
2. Two Counts of *Deceit* – contrary to section 77(3)(f)(i)(A) of the *Police Act*, specifically that when the officer was interviewed by professional standards investigators, the officer claimed that he/she had created the notes in question at the time the incidents occurred or shortly thereafter.
3. One Count of *Neglect of Duty* – contrary to section 77(3)(m)(ii) of the *Police Act*, specifically that the officer failed to keep an accurate record in his/her police notebook or maintain his/her notebook in a manner that conformed to policy and training.

The discipline authority forwarded his Notice of Discipline Authority's Decision to the OPCC and the officer. After reviewing the decision, the officer's counsel requested that further investigation occur pursuant to section 114 of the *Police Act*.

The discipline authority was mindful of the requirements imposed upon him by sections 114(5) and 119(4) of the *Police Act* when considering the request and outlined what further investigative steps were to be taken.

Once those steps were completed, the discipline authority reviewed all of the materials and issued a section 116 Notice of Discipline Authority's Decision. In the Notice, the discipline authority again substantiated the four counts of *Deceit* and the one

count of *Neglect of Duty* and advised that he would be convening a Discipline Proceeding in relation to the matter.

Once the Discipline Proceeding was convened, the disciple authority agreed with the officer's counsel to adjourn so that an investigation could be conducted into new evidence that had been brought to the attention of the professional standards investigator. At the completion of the further investigation, the Discipline Proceeding was reconvened. The officer did not call any witnesses and admitted to committing the four allegations of *Deceit* and the single allegation of *Neglect of Duty*.

After considering all of the aggravating and mitigating factors in relation to this matter, the discipline authority proposed that the officer be dismissed in relation to each count of *Deceit*. In relation to the substantiation of *Neglect of Duty*, the discipline authority proposed that the officer receive a suspension of 10 days without pay.

Pursuant to section 137 of the *Police Act*, where a discipline authority proposes dismissal or reduction in rank as a disciplinary measure, upon written request from the officer, the Commissioner must promptly arrange a Public Hearing or Review on the Record.

With the assistance of legal counsel, the officer limited his/her request to a Public Hearing, taking issue only with the proposed discipline and not with the substantiation of the allegations.

The Commissioner reviewed all of the relevant material and was satisfied that it would not be necessary to examine witnesses or receive evidence that was not currently part of the Record of Disciplinary Decision.

Furthermore, the Commissioner was satisfied that a Public Hearing was not required to preserve or restore public confidence in the investigation of misconduct and the administration of police discipline. Therefore, the Commissioner determined that a Review on the Record was a more effective and efficient means of adjudicative review given the circumstances. In his decision, the Commissioner noted that pursuant to section 141(4) of the *Police Act*, in "special circumstances", an adjudicator has the discretion to receive evidence outside of what was contemplated as the focus of the Review. Upon the recommendation of the Associate Chief Justice of the British Columbia Supreme Court, retired Provincial Court Judge Mr. Alan Filmer was appointed to preside as Adjudicator in these proceedings, pursuant to section 142(2) of the *Police Act*.

At the commencement of the Review of the Record, counsel were in agreement that the substantiation of *Neglect of Duty* had been dealt with appropriately by the discipline authority and that the Review on the Record should deal solely with each count of *Deceit*.

The Adjudicator was provided all of the records related to the investigation and Discipline Proceeding. The Adjudicator considered all of the various aggravating and mitigating factors listed in section 126 (2) of the *Police Act*, including, but not limited to: the submissions of counsel, penalties in other similar cases, letters in support, Performance Appraisals, family situation and medical concerns. Upon concluding the Review on the Record, it was the Adjudicator's opinion that the officer was no longer able to fill the role of a police officer and that the only discipline appropriate for each count of *Deceit* was dismissal. The Adjudicator, therefore, ordered that the officer be dismissed.

In his decision, the Adjudicator made three recommendations:

1. If possible, persons applying to join a police force should be asked to undergo a psychological assessment to determine their suitability.
2. The first year of a police officer's employment be treated as a period of probation, with regular checks by senior officers into the performance of the junior officer, including the taking of accurate notes.
3. All police officers' notebooks be checked on a random basis to ensure that notes are maintained to conform with policy and training.

The Adjudicator's Reasons for Decision in relation to Review on the Record 2015-01 can be found at www.opcc.bc.ca.

### Ordered Investigation – Initiated by the Commissioner
### 2014-9652-01
*Substantiated*

Pursuant to section 89 of the *Police Act*, the police department first reported this matter to the OPCC as a Reportable Injury. The circumstances described were that the officer noticed a vehicle travelling at a high rate of speed and activated his/her radar and recorded the vehicle travelling at a speed of 115km/h in a 40km/h zone. By the time the officer completed a U-turn and activated the police vehicle's emergency lights, the vehicle in question was out of sight. The officer continued driving with his/her emergency lights activated and located the vehicle in question in a ditch with a seriously injured

male inside the wreckage.

The Commissioner determined that the injuries sustained by the male constituted serious harm as defined by the *Police Act* and could be seen to have been the result of the conduct of the officer. Therefore, the Commissioner directed the incident be investigated by an external police agency pursuant to section 89 of the Act. In addition, the Independent Investigations Office (IIO) asserted jurisdiction and conducted an investigation into this matter.

For cases involving serious harm or death, the IIO is responsible for investigating the actions and decisions of the involved officers. The IIO must report the matter to Crown Counsel in cases where "an officer may have committed an offence under any enactment, including an enactment of Canada or another province." The IIO may also identify other conduct concerns not within their mandate but within the scope and jurisdiction of the OPCC.

Due to the IIO's investigation, the investigation into this matter under the *Police Act* was suspended as the Commissioner determined that continuation of the *Police Act* proceedings would prejudice the ongoing criminal investigation or prosecution related to this matter.

The IIO subsequently issued a Public Report concluding that there was no reason to believe the officer may have committed any offence and that the IIO would not be referring this case to Crown Counsel for consideration of possible charges. Based on their review of the evidence, the IIO was of the opinion that there was no evidence that the officer's driving put any person in danger or was the type of police driving prohibited by law. In addition, they determined that there was no evidence that the officer's driving was a contributing cause of the affected person's dangerous driving or the crash and subsequent injury.

Having reviewed the investigative materials from the IIO in relation to this matter, the Commissioner was of the view that any further investigation into the conduct of the officer in relation to the section 89 review of the injury to the affected person was neither necessary nor reasonably practicable. The materials reviewed to date did not indicate that the serious harm suffered by the affected person could be seen to be the result of the conduct of the officer.

Accordingly, having regard to all the circumstances in relation to this matter, the Commissioner directed that the section 89 investigation into this matter be discontinued pursuant to section 109(1)(a) of the *Police Act*. However, the evidence from the IIO investigation indicated that while following the affected person, the officer was at times driving in significant excess of the posted speed limit and was doing so without his emergency sirens activated.

Based on the information received to date, the Commissioner ordered an investigation with the identified potential misconduct being:

1. *Neglect of Duty* pursuant to section 77(3)(m)(ii) of the *Police Act*, for neglecting, without good or sufficient cause, to promptly and diligently drive in a manner that complied with the *Motor Vehicle Act* and Emergency Vehicle Driving Regulation of British Columbia.

Additionally, the Commissioner was of the opinion that it was necessary in the public interest that the investigation be conducted by an external police force, pursuant to section 93(1)(a) and section 93(1)(b)(ii) of the *Police Act*.

At the end of the *Police Act* investigation, the discipline authority determined that the evidence appeared to substantiate the allegation of *Neglect of Duty* and offered the officer a prehearing conference. At the prehearing conference, an agreement was reached with respect to the proposed discipline of Advice to Future Conduct.

The report following the prehearing conference was reviewed by the OPCC and it was determined that the disciplinary measures imposed at the prehearing conference were both correct and appropriate with respect to the circumstances. Therefore, the agreement reached at the prehearing conference was approved. The disciplinary or corrective measures were entered into the officer's Service Record of Discipline.

### Internal Discipline 2016-11497
*Substantiated*

Internal discipline files are the responsibility of an officer's employer and are processed under Division 6 of the *Police Act*. The internal discipline authority must provide the Commissioner with a copy of any recommendation on disciplinary or corrective measures arising from an internal discipline matter and the final decision reached by the internal discipline authority.

The police department advised the OPCC of the following:

1. *Deceit* – contrary to section 77(3)(f)(i)(B) of the *Police Act*

The officer requested a new rain jacket from the department's Inventory Control. The officer was

informed that new jackets were only issued if a jacket was damaged beyond repair or lost. The officer completed a "Lost, Damaged or Defective Uniform and Personal Equipment Report" and wrote "jacket got caught on fence, big rip down back, requesting replacement", knowing that it was false. The officer then produced this false document to a supervisor who, based on the form's contents, signed the form authorizing the officer to receive a new jacket. The officer was subsequently issued a new rain jacket.

2. *Discreditable Conduct* – contrary to section 77(3)(h) of the *Police Act*.

A few days later, the officer was directed by his/her supervisor to produce the damaged rain jacket. The officer attended the department's locker room and removed another officer's jacket.

3. *Damage to Police Property* – contrary to section 77(3)(d) of the *Police Act*.

The officer then cut the jacket in a way that was consistent with the false "Lost, Damaged, or Defective Uniform and Personal Equipment Report". After showing the jacket to his/her supervisor, the officer discarded the jacket in a uniform disposal bin.

4. *Deceit* – contrary to section 77(3)(f)(i)(B) of the *Police Act*.

A few weeks later, the officer authored another false "Lost, Damaged, or Defective Uniform and Personal Equipment Report", this time requesting a new winter parka for one that he/she claimed was lost. The officer then produced this false document to a supervisor who, based on its contents, signed the form authorizing the officer to receive a new jacket. The officer was subsequently issued a new winter parka.

5. *Deceit* – contrary to section 77(3)(f)(i)(A) of the *Police Act*.

An internal investigation was commenced into the circumstances surrounding the actions of the officer. The officer subsequently made false statements to the professional standards investigator during two interviews. The officer alleged that he/she did not know who owned the jacket he/she had stolen and damaged, that he/she did not know the specific location where he/she stole the jacket from, and that he/she did not remove the owner's name tag from the jacket.

Rather than assess discipline or corrective measures for each of the five substantiated allegations, the discipline authority assessed the discipline on the totality of the events. Although the officer resigned prior to the Internal Discipline Decision, the discipline authority was of the opinion that the five substantiated allegations were serious in nature and impacted on the officer's ability to carry out his/her duties as an officer. Therefore, the discipline authority proposed that the officer be dismissed and that this discipline form part of his/her Service Record of Discipline.

### Internal Discipline 2015-10319
*Substantiated*

*Discreditable Conduct* – contrary to section 77(3)(h) of the *Police Act*.

Members of the Street Crime Unit had been contributing money on an ongoing basis to a jar placed in the open on a desk within the police department. It was noticed that monies were missing. A criminal investigation was conducted and it was determined that an officer had engaged in a theft of money from the jar on several occasions.

The officer was served with a Letter of Termination effective immediately.

The officer was charged with two counts of *Theft* and one count of *Breach of Trust* contrary to the *Criminal Code*.

### Service or Policy 2014-9921
*Investigated - Changes Made to Procedures*

The complainant attended the police department to report a theft. The complainant reported that she did not feel that she was provided sufficient privacy while making her report. The OPCC determined this to be a service or policy complaint and forwarded it to the department's police board for processing in accordance with Division 5 of the *Police Act*.

The police board reviewed the complaint and directed the department to investigate the complaint pursuant to subsection 171(1)(a) of the *Police Act* and to submit a report for the board's consideration.

As a result of the investigation, the board was advised that the complainant was initially spoken to by a volunteer who, after ascertaining the nature of her enquiry, directed her to an officer who was working at the front counter. The officer was behind bullet proof glass and speaking though a microphone which amplifies sound and offers limited privacy. The complainant requested a private location to discuss her situation. As no interview room was available and the microphone system provided limited privacy, the officer walked the complainant to a quiet corner of the lobby to discuss the matter.

The department was aware of the issues in relation to the lack of privacy due to the front lobby design and was actively pursuing alternatives to the microphone system. Steps to improve the situation had been initiated even prior to the receipt of this complaint.

The police board apologized to the complainant for her negative experience and thanked her for taking the time to bring this matter to the attention of the police board. The police board assured the complainant that design changes to the front lobby were currently underway, specifically with a view to affording privacy to individuals who may attend to discuss sensitive information.

The board advised the complainant that if she was not satisfied with the decision of the board she may, pursuant to subsection 172(2) of the *Police Act*, request the Office of the Police Complaint Commissioner to review this matter within 20 business days of receiving the board's concluding letter.

The complainant subsequently advised the OPCC that the board's concluding letter failed to address her concern for the exchange of sensitive and/or personal information in an open area.

The OPCC was informed that the department implemented initiatives to address the concerns outlined by the complainant: volunteers and police officers had been asked to be mindful of matters that may be sensitive and/or personal in nature which are brought to their attention by members of the public. Specifically, front desk volunteers have been provided training through the volunteer coordinator on the issues of privacy. This training will be implemented as part of the orientation for new volunteers. In addition, police officers have been provided instruction through their supervisors on the issues of privacy relating to the current microphone system and are encouraged to exchange sensitive and/or personal information in writing.

The OPCC advised the complainant and she confirmed her satisfaction regarding the initiatives that had been undertaken by the department to address the exchange of sensitive and/or personal information.

Having had the opportunity to examine the board's decision, this office was satisfied with the outcome and would not be making any recommendations for further investigation, study, courses of action or changes to service or policy respecting this particular matter.

### Service or Policy 2014-10188

*Investigated – Dismissed by Board*

The complainant reported that the police department's recruitment policy discriminated against people with colour vision deficiency. The OPCC determined this to be a service or policy complaint and forwarded it to the department's police board for processing in accordance with Division 5 of the *Police Act*.

The police board reviewed the complaint and directed the department to investigate the complaint pursuant to subsection 171(1)(a) of the *Police Act* and to submit a report for the board's consideration.

As a result of the report, the police board dismissed the complaint, advising that under the *Police Act*, the Director of Police Services Division sets provincial police standards for all police departments in the province [section 40 (1.2)]. Section C5.6.4 of these standards deals with medical examinations and states that "a medical examination of each candidate is conducted, prior to appointment, by a licensed physician. The examination should be conducted by a physician identified and paid by the department. The examination is to include visual acuity, colour vision, and visual fields, to the visual standards as recommended by the Canadian Ophthalmological Society (COS) Visual Standards for Police Officers". The COS recommends the following standards:

- Uncorrected Vision: 20/40 with both eyes open, with any one eye no worse than 20/100.
- Corrected Vision: 20/20 with both eyes open, with any one eye no worse than 20/40.
- Colour Vision: Colour vision should be normal. (i.e. pass the Farnsworth D-15 test)
- Peripheral Vision: 150 continuous degrees along the horizontal meridian binocularly, and 30 degrees above and below the fixation point.

The Farnsworth D-15 is an appropriate test for police colour vision screening. According to MED-TOX Health Services, the Farnsworth D-15 is a test which will identify the individual who demonstrates practical problems distinguishing colours and who misidentifies colours. The Farnsworth D-15 also identifies the type and the severity of one's colour blindness.

It was the practice of the department's Recruiting Unit to follow up with applicants and their doctors should their colour vision results show an abnormality. Detectives are required to consult with the ophthalmologist to assess the severity and

whether it would impact the general duty of a police officer. In the complainant's case, Recruiting Unit Detectives could not liaise with the complainant or his doctor for follow up. The complainant later stated that he was travelling and studying overseas.

The complainant was informed that if he believed that the standards were outdated, it would be more appropriate for him to complain to the Ministry of Justice and he was provided the contact information of the appropriate Ministry of Justice staff, in order for him to make his case to them about revising the standard.

The board advised the complainant that if he was not satisfied with the decision of the Board he may, pursuant to subsection 172(2) of the *Police Act*, request the Office of the Police Complaint Commissioner to review the matter within 20 business days of receiving the board's concluding letter.

The complainant exercised this right. Having had the opportunity to examine the study and the board's decision, the OPCC was satisfied with the outcome and would not be making any recommendations for further investigation, study, courses of actions or changes to service or policy respecting this matter.

You can see the *Police Act* in its entirety at:
http://www.bclaws.ca/civix/document/id/complete/statreg/96367_01

# SUBSTANTIATED ALLEGATION SUMMARIES

The following table provides summaries of all *substantiated* allegations against municipal officers which were concluded between April 1, 2015, and March 31, 2016.

## Abbotsford Police Department

**Ordered Investigation** 2015-10655
Requested by the department

Date of Incident: 2015 03 11

| | |
|---|---|
| A police officer accessed police databases for purposes unrelated to his/her duties as a police officer. | **Misconduct**: *Unauthorized Use of Police Facilities/Resources*<br>**Discipline**: Written reprimand |

**Internal Discipline** 2015-10655-01

Dates of Incident: Various

| | |
|---|---|
| A police officer failed to obey a *Cease Contact Order* issued by the Chief Constable. | **Misconduct**: *Neglect of Duty* - failure to follow supervisor's lawful order<br>**Discipline**:<br>12-day suspension; removal of the designation "senior" to the officer's rank. After one year from the date discipline was imposed, the officer will become eligible to compete for that position once more. The officer is not eligible to act as, or compete for, the rank of Sergeant for the period of one year. |

**Registered Complaint** 2013-9225-01

Date of Incident: 2013 11 19

| | |
|---|---|
| Three police members failed to properly document the authorisation and strip search of the complainant and his two associates. | **Misconduct**: *Neglect of Duty* - inadequate documentation, notes and/or records<br>**Discipline**:<br>Member 1 - Advice to future conduct<br>Member 2 - Advice to future conduct<br>Member 3 - Advice to future conduct |

**Registered Complaint** 2013-9225-02

Date of Incident: 2013 11 19

| | |
|---|---|
| The jail supervisor failed to properly document the authorisation and strip search of the complainant and his two associates. | **Misconduct**: *Neglect of Duty* - inadequate documentation, notes, and/or records<br>**Discipline**: Advice to future conduct |

**Internal Discipline** 2016-11497

Date of Incident: 2015 11 02 & 2016 01 27

| | |
|---|---|
| 1. The police member authored a report stating that his/her department-issued rain jacket had been damaged in order to obtain a new one. | **Misconduct 1**: *Deceit*<br>**Discipline 1**: Dismissal |
| 2. When the police member was asked to produce his/her damaged rain jacket, the police member removed another police member's jacket from the locker room. | **Misconduct 2**: *Discreditable Conduct*<br>**Discipline 2**: Dismissal |
| 3. The police member then intentionally cut the other police member's jacket in an effort to conceal his/her actions. | **Misconduct 3**: *Damage to Police Property*<br>**Discipline 3**: Dismissal |
| 4. The police member authored a report stating that his/her department-issued winter jacket had been lost in order to obtain a new one. | **Misconduct 4**: *Deceit*<br>**Discipline 4**: Dismissal<br>**Misconduct 5**: *Deceit* |

| | |
|---|---|
| 5. The police member made statements during two interviews with a professional standards investigator knowing that they were false. | **Discipline 5**: Dismissal<br>The officer resigned prior to the discipline authority's decision, however, the discipline will form part of the member's Service Record of Discipline. |

## Central Saanich Police Service

**Ordered Investigation** 2014-9652-01
Initiated by the Commissioner

Date of Incident: 2014 05 12

| | |
|---|---|
| The police member was not in compliance with the *Motor Vehicle Act* and Emergency Driving Regulations when the police member drove over the posted speed limit without activating the police vehicle's siren. | **Misconduct**: Neglect of Duty (dangerous driving)<br>**Discipline**: Advice to future conduct |

## CFSEU (Combined Forces Special Enforcement Unit)

**Ordered Investigation** 2014-9669
Requested by the department

Date of Incident: Undated

| | |
|---|---|
| A police officer failed to properly account for his/her firearm after retirement. | **Misconduct**: *Improper Use or Care of Firearms* - unsafe storage of firearm<br>**Discipline**: Verbal reprimand |

## Delta Police Department

**Ordered Investigation** 2014-9987
Requested by the department

Date of Incident: Undated

| | |
|---|---|
| 1. A police officer engaged in a relationship with a person believed to be involved in the sale of a controlled substance.<br>2. The officer purchased and used non-prescription steroids. | **Misconduct 1**: *Discreditable Conduct*<br>**Discipline 1**: Reduction in rank for 18 months; direction to work under close supervision; written reprimand<br>**Misconduct 2**: *Discreditable Conduct*<br>**Discipline 2**: Reduction in rank for 18 months; direction to treatment as required by employer; written reprimand |

**Registered Complaint** 2014-10014

Date of Incident: 2014 08 17

| | |
|---|---|
| A police officer failed to behave with courtesy due in the circumstances towards a member of the public. | **Misconduct**: *Discourtesy*<br>**Discipline**: Written reprimand |

**Ordered Investigation** 2015-10965
Requested by the department

Date of Incident: 2015 07 23

| | |
|---|---|
| A police officer unintentionally discharged a police-issued firearm in a locker room located in the police department. | **Misconduct**: *Improper Use or Care of Firearms* - unintentional discharge of firearm<br>**Discipline**: Written reprimand |

**Ordered Investigation** 2013-8599
Initiated by the Commissioner

Dates of Incident: 2005 - 2013

| | |
|---|---|
| 1. The police member created notes for a PRIME file which he/she misrepresented as having been made at the time or shortly after the incident.<br>2. The police member made false and | **Misconduct 1**: *Deceit* (false or misleading entry in official document, record)<br>**Discipline 1**: Dismissal<br>**Misconduct 2**: *Deceit* (false or misleading oral statement) |

misleading statements to professional standards investigators regarding the time he/she created the police notes in question.

3. The police member created notes for another PRIME file which he/she misrepresented as having been made at the time or shortly after the incident.
4. The police member again made false and misleading statements to professional standards investigators regarding the time he/she created the police notes in question.
5. The police member failed to keep an accurate record in his/her police notebook. The police member failed to maintain his/her police notebook in a manner that conformed to policy and training.

**Discipline 2**: Dismissal

**Misconduct 3**: *Deceit* (false or misleading entry in official document, record)

**Discipline 3**: Dismissal

**Misconduct 4**: *Deceit* (false or misleading oral statement)

**Discipline 4**: Dismissal

**Misconduct 5**: *Neglect of Duty* (inadequate documentation/notes/records)

**Discipline 5**: 10-day suspension

This file was the subject of Review on the Record. For further information please go to RR2015-01 at www.opcc.bc.ca.

**Ordered Investigation** 2015-10759-01
Initiated by the Commissioner

Date of Incident: 2015 05 20

The police member failed to operate his/her police vehicle in a manner that complied with the *Motor Vehicle Act* and Emergency Driving Regulation of British Columbia.

**Misconduct**: *Neglect of Duty* (dangerous driving)

**Discipline**: Training including a review of both the department's Pursuit Policy, the Emergency Vehicle Driving Regulation and receiving additional training in both these areas.

**Ordered Investigation** 2014-10181
Requested by the department

Date of Incident: 2014 11 14

The police officer, while off duty, was removed from a nightclub for being intoxicated. In an attempt to regain entry, the officer identified himself/herself as an "undercover officer".

**Misconduct**: *Discreditable Conduct*

**Discipline**: Written reprimand; one-day suspension; further training to assist the member in assessing his/her behaviours.

**Ordered Investigation** 2015-10394
Requested by the department

Date of Incident: 2015 01 28

While off-duty, the police officer attended a restaurant outside British Columbia. The officer became highly intoxicated and caused a disturbance. Police attended the scene and subsequently placed the off-duty member under arrest for public intoxication. There were no criminal charges but the officer received a violation ticket for public drunkenness.

**Misconduct**: *Discreditable Conduct*

**Discipline**: 2-day suspension without pay; direction to counselling

## Nelson Police Department

No substantiated misconduct in this reporting period

## New Westminster Police Department

**Ordered Investigation** 2014-9949
Requested by the department

Dates of Incident: 2012 08 24 to 2013 01 03

1. A police officer neglected to conduct reasonable follow-up investigative steps in relation to a sexual assault allegation. The officer also neglected to submit a Violent Crime Linkage Analysis System report within 24 days of the incident or to notify the Ministry of Child and Family Services of the incident in accordance with department policy.

2. The officer neglected to notify or attempt to notify the victim of an alleged sexual assault that the investigation was concluded and the reasons why.

**Misconduct 1**: *Neglect of Duty* - inadequate investigation
**Discipline 1**: Written reprimand; review of policy and procedures for major crime-related investigations

**Misconduct 2**: *Neglect of Duty* - inadequate investigation
**Discipline 2**: Verbal reprimand

**Ordered Investigation** 2014-9953
Requested by the department

Date of Incident: 2014 09 04
Registered Complaint was received after the Commissioner ordered investigation

On September 4, 2014, a police officer on probation, engaged in an argument with his girlfriend, while off-duty, that escalated into a domestic assault.

The officer resigned.

**Misconduct**: *Discreditable Conduct*
**Discipline**: 10-day suspension without pay

The discipline authority determined that the resignation of the officer and the outcome of the criminal process which resulted in a Peace Bond between the two parties mitigated the final recommended disciplinary measure.

**Internal Discipline** 2015-10319

Dates of Incident: 2014 09 to 2014 12 26

A police officer engaged in a theft of monies from a container where members of the Street Crime Unit had been contributing money.

**Misconduct**: *Discreditable Conduct*
**Discipline**: Dismissal

The officer was charged with two counts of *Theft* and one count of *Breach of Trust* contrary to the *Criminal Code*.

**Registered Complaint** 2015-10697

Dates of Incident: 2015 04 10 and 2015 04 20

1. A company was contracted to replace and repair the fencing at a townhouse complex where a police officer was a resident owner. The officer used police databases to query one of the contractors and the licence plate of a vehicle being used by the contractors.

2. A member of the property management company attended the officer's residence to update the officer on the progress of the fence repair. During that conversation, the officer disclosed that a vehicle being driven by one of the contractors was uninsured and that one of the contractors had a criminal record.

**Misconduct 1**: *Unauthorized Use of Police Facilities/Resources* - unauthorized search of CPIC/PRIME
**Discipline**: One-day suspension

**Misconduct 2**: *Improper Disclosure of Information* - disclosing information acquired as a police officer
**Discipline**: Written reprimand

## Oak Bay Police Department

No substantiated misconduct in this reporting period

# SUBSTANTIATED ALLEGATION SUMMARIES

## Port Moody Police Department

**Ordered Investigation** 2014-9727
Initiated by the Commissioner

Date of Incident: 2014 06 08

The police member used unnecessary force to control a male being placed into a jail cell.

**Misconduct**: *Abuse of Authority* - excessive force – empty hand

**Discipline**: Verbal reprimand; remedial training with the departmental use-of-force instructor with respect to Force Options Theory and the selection of control options when dealing with a resistant subject in the cellblock.

The Commissioner exercised his powers under section 111 of the Act and referred this matter to Crown Counsel. Crown Counsel approved a charge of *Assault Causing Bodily Harm* to the complainant under the *Criminal Code*. The police member pled guilty to a lesser included offence of *Assault* and received a conditional discharge.

## Saanich Police

**Ordered Investigation** 2015-10834
Requested by the department

Date of Incident: Undated

A police officer responded to an "unwanted guest/intoxicated person" complaint at a private residence. The subject of the call, an intoxicated male, was found to be in breach of his court ordered conditions and his probation officer was notified.

The officer failed to continue to communicate with the probation officer in a timely manner.

**Misconduct**: *Neglect of Duty* - failure to comply with departmental policy/regulations

**Discipline**: Verbal reprimand; work under close supervision for six months

**Ordered Investigation** 2015-10899
Requested by the department

Date of Incident: Undated

A police officer was operating a fitness consulting business during the officer's off-duty hours which included appearing in a video that was published on the internet. The content of the video was found to have discredited the department in that it did not meet the reasonable expectations of the public. The officer resigned prior to the investigation being completed.

**Misconduct**: *Discreditable Conduct* - conduct that discredits the department

**Discipline**: Advice to future conduct

## Transit Police Service (SCBCTAPS)

**Ordered Investigation** 2013 8743
Requested by the department

Date of Incident: 2013 03 07

1. A police officer arrested a male without sufficient grounds.

2. The officer used excessive force during the course of the arrest.

**Misconduct 1**: *Abuse of Authority* x 2

**Discipline**: 2-day suspension; retraining in the Powers of Arrest and Detention, the *Controlled Drug and Substances Act* and in Use of Force; directed to issue a letter of apology to the subject male and the officer's police partner.

**Ordered Investigation** 2014-9349
Requested by the department

Dates of Incident: Various

A police officer failed to disclose his full *Police Act* record to Crown Counsel through a "McNeil Disclosure" form on eight separate occasions.

**Misconduct**: *Neglect of Duty* x 8 - inadequate documentation/notes/records

**Discipline**: One-day suspension for each substantiated allegation to be served consecutively for a total of an 8-day suspension.

**Internal Discipline** 2014-9660

Date of Incident: 2014 03 16

During a police briefing, the police officer displayed behaviour that caused his/her employer concern.

**Misconduct**: *Discreditable Conduct*

**Discipline**: Counselling, treatment

**Internal Discipline** 2015-10503

Date of Incident: 2015 06 15

The police officer turned off his/her police radio to complete a report. The officer was requested to turn the radio back on and responded in an inappropriate manner.

**Misconduct**: *Discreditable Conduct*

**Discipline**: Written reprimand

## Sil'ath'imx Tribal Police

No substantiated misconduct in this reporting period

## Vancouver Police Department

**Ordered Investigation** 2011-6210
Requested by the department

Dates of Incident: Various

1. A police officer accessed police databases on three occasions for purposes unrelated to the duties of a police officer.
2. The officer disclosed information that the officer acquired from police databases to a member of the public.

The discipline authority determined that the investigation supported the substantiation of six allegations and imposed discipline that included dismissal. The officer exercised the right to a Public Hearing pursuant to section 137 of the *Police Act*. The Adjudicator subsequently determined that only two allegations had been proven. For more information, see PH2013-04 at www.opcc.bc.ca.

**Misconduct 1**: *Unauthorized Use of Police Facilities/Resources* (unauthorized search of CPIC/PRIME)

**Discipline**: Written reprimand

**Misconduct 2**: *Improper Disclosure of Information*

**Discipline**: Written reprimand

**Ordered Investigation** 2012-7741
Requested by the department

Date of Incident: 2012 07 22

1. A police officer, while off-duty, operated a motor vehicle after having consumed alcohol in such a quantity as to register a "warn" on an approved screening device.
2. The officer, while off-duty, used or attempted to use his/her position as a police officer to influence the outcome of an investigation into

**Misconduct 1**: *Discreditable Conduct*

**Discipline**: One-day suspension without pay

**Misconduct 2**: *Discreditable Conduct*

**Discipline**: One-day suspension without pay

This allegation was unsubstantiated by the discipline

| | |
|---|---|
| his/her operation of a motor vehicle while his/her ability to do so was affected by alcohol. | authority. The Police Complaint Commissioner ordered a s.117 review. The retired judge who conducted the review substantiated this allegation and the officer accepted a one-day suspension at a prehearing conference. For further information please go to Section 117 Reviews 2012-7741 at www.opcc.bc.ca. |

**Ordered Investigation** 2013-9173
Initiated by the Commissioner

Date of Incident: 2013 11 01

| | |
|---|---|
| A police officer delivered a closed-fisted strike to a member of the public who was involved in a fight with another person. This person was rendered unconscious as a result. | **Misconduct**: *Abuse of Authority* - excessive force/empty hand<br><br>**Discipline**: Advice to future conduct including direction for the officer to re-read and study the use-of-force report relating to the incident |

**Ordered Investigation** 2013-9232
Requested by the department

Date of Incident: 2013 09 30

| | |
|---|---|
| A police officer received explicit direction from the officer's supervisors to refrain from any involvement in a specific police investigation. Later that same day, the officer attended a police roadside meeting related to that investigation on the officer's own accord. | **Misconduct**: *Neglect of Duty* - failure to follow supervisor's lawful order<br><br>**Discipline**: Written reprimand |

**Ordered Investigation** 2014-9436-03
Initiated by the Commissioner

Date of Incident: 2014 02 17

| | |
|---|---|
| A police officer failed to drive with due care, specifically, by driving through a red light and causing a collision with another vehicle. | **Misconduct**: *Neglect of Duty* - dangerous driving<br><br>**Discipline**: Verbal reprimand<br><br>The Police Complaint Commissioner exercised his powers under section 111 of the Act and referred this matter to Crown Counsel. Crown Counsel approved a charge under section 144(1) of the *Motor Vehicle Act*.<br><br>This file was the subject of a section 117 review. The retired judge who conducted the review substantiated this allegation and the officer accepted a verbal reprimand at a prehearing conference. For further information please go to Section 117 Reviews 2014-9436-03 at www.opcc.bc.ca |

**Ordered Investigation** 2014-10136
Initiated by the Commissioner

Date of Incident: 2014 10 31

| | |
|---|---|
| A police officer failed to safely clear an intersection and did so while not operating emergency vehicle equipment. As a result, the police vehicle collided with a civilian vehicle. | **Misconduct**: *Neglect of Duty* - dangerous driving<br><br>**Discipline**: Training including a review of department policy and relevant manuals in relation to Emergency Vehicle Driving Regulations and section 122 of the *Motor Vehicle Act*, and satisfy a supervisor designated by the department that the officer understands the intent and application of that information.<br><br>Participate in a four-hour, one-on-one driver training program designed to evaluate a driver's on-road driving skills and to provide coaching on collision avoidance techniques. |

**Ordered Investigation** 2014-10141
Requested by the department

Date of Incident: 2014 10 10

A police officer left a loaded police-issued firearm in the officer's desk drawer.

**Misconduct**: *Improper Use or Care of Firearms* - unsafe storage of firearm

**Discipline**: Written reprimand

**Ordered Investigation** 2014-10183
Requested by the department

Date of Incident: 2014 11 17

A police officer neglected to ensure that a police-issued firearm was not loaded before engaging in practicing "dry firing" prior to attending the range for the officer's annual firearms qualification.

**Misconduct**: *Improper Use or Care of Firearms* - accidental discharge of firearm

**Discipline**: Retraining on the safe use of firearms; advice to future conduct

**Ordered Investigation** 2015-10350
Requested by the department

Date of Incident: 2015 01 13

A police officer made a derogatory comment on Facebook. The officer's profile on Facebook identified the member as a police officer.

**Misconduct**: *Discreditable Conduct*

**Discipline**: Verbal reprimand

## Victoria Police Department

**Ordered Investigation** 2014-9930
Requested by the department

Dates of Incident: Various

On May 29, 2014, the department served a police officer with a *Letter of Expectations* as a result of the officer soliciting loans from private individuals.

On August 20, 2014, a member of the public contacted the department and reported that the officer had recently contacted him asking for money. The officer failed to comply with the department's *Letter of Expectations*.

The officer was the subject of a criminal investigation, the result of which the officer pled guilty to one count of forgery for which the officer received an absolute discharge.

**Misconduct 1**: *Discreditable Conduct*

**Discipline 1**: Transfer/reassignment

**Misconduct 2**: *Neglect of Duty* - failure to follow supervisor's lawful order

**Discipline 2**: Transfer/reassignment

**Misconduct 3**: *Discreditable Conduct*

**Discipline 3**: Dismissal

The officer resigned from the department prior to a prehearing conference being held. An agent for the former officer attended the prehearing conference and entered submissions wherein the former officer admitted the misconduct. Accordingly, in considering the appropriate disciplinary or corrective measures for the allegation of *Neglect of Duty* and one of the allegations of *Discreditable Conduct*, the discipline authority was guided in part by the fact that the officer was no longer serving as a police officer and the officer's Service Record of Discipline would indicate that the officer was dismissed as a result of disciplinary action.

Having regard to the unique and complicated factors in this case, the discipline authority was satisfied that in totality the measures noted above were an appropriate way to ensure that the officer had been corrected and educated and such a disposition would not bring the administration of police discipline into disrepute.

**West Vancouver Police Department**

**Ordered Investigation** 2014-9529
Requested by the department

Date of Incident: 2014 03 30

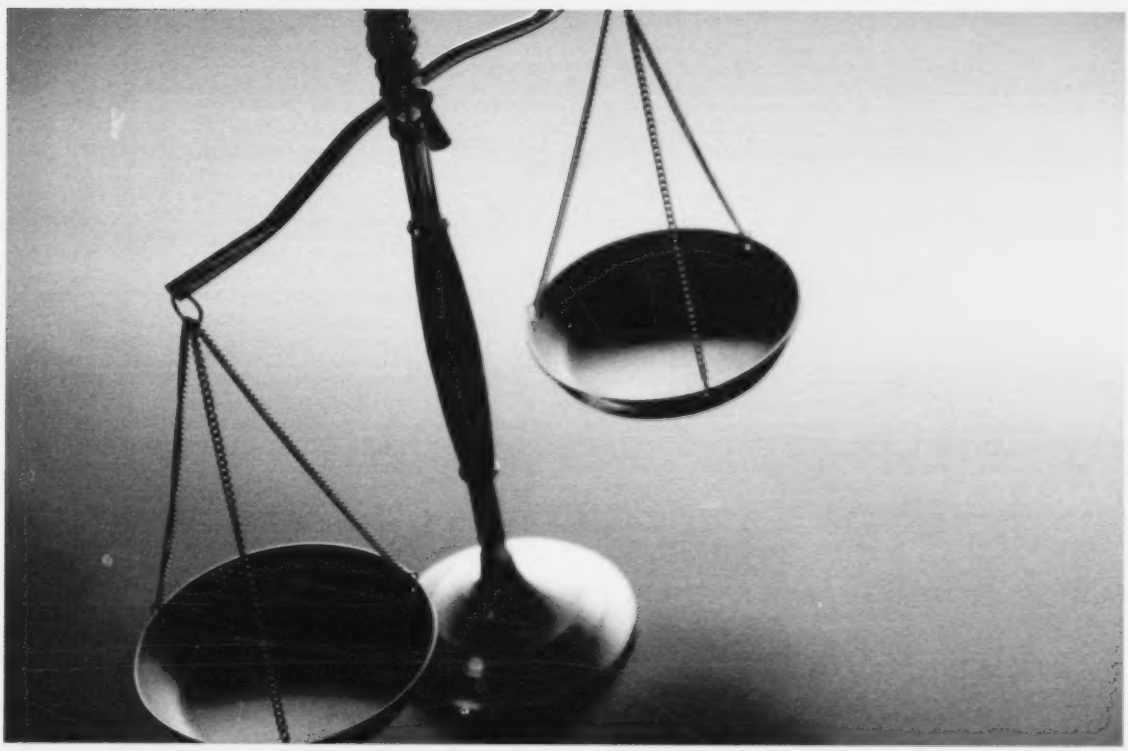
1. A police officer reported to work unfit for duty due to the effects of intoxicating liquor.
2. The officer drove away from the police station in a private vehicle knowing his/her alcohol level was over the legal limit.

**Misconduct 1**: *Misuse of Intoxicants*

**Discipline 1**: Written reprimand

**Misconduct 2**: *Discreditable Conduct*

**Discipline 2**: One-day suspension without pay



# STATISTICS

## Introduction

When a complaint is received at the OPCC, a file is opened and assigned to an investigative analyst. All complaints are reviewed to determine whether they are admissible pursuant to the *Police Act* and, if so, complaints are then broken down into their individual allegations. An admissible complaint file often contains more than one allegation, involving one or more officers.

The following is an example of how one complaint file can result in multiple allegations and results:

> *A complainant states that three officers entered his residence without a warrant and two officers used excessive force in order to handcuff him. The complainant further states one officer unlawfully seized property that was subsequently lost.*

The admissibility analyst reviews the complaint and breaks it down into its individual components or "allegations". The above complaint would likely be broken down into the following allegations of misconduct as defined by the *Police Act*:

| | |
|---|---|
| *Abuse of Authority* | unlawful entry – involving three officers |
| *Abuse of Authority* | excessive force – involving two officers |
| *Abuse of Authority* | unlawful seizure of property – involving one officer |
| *Neglect of Duty* | improper care and handling of seized property – involving one officer |

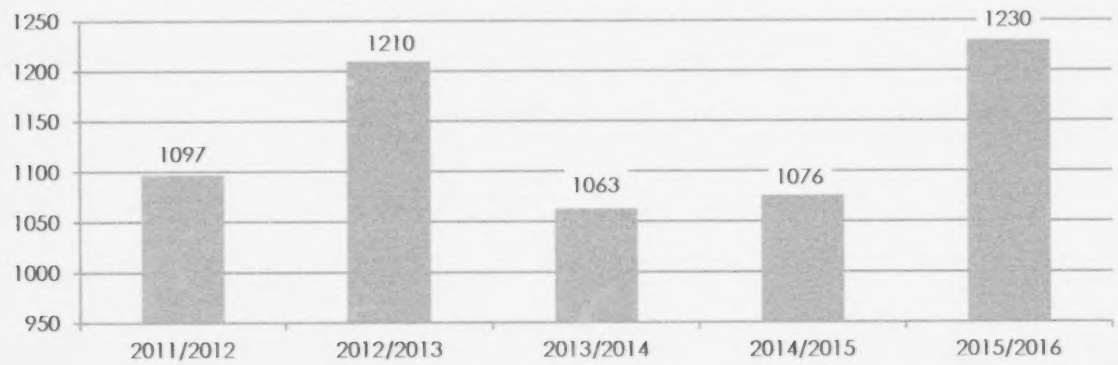
Following the investigation, the discipline authority may determine that none, some or all of the allegations of misconduct have been proven against none, some or all of the officers. Continuing with the example above, the decision may be:

| | |
|---|---|
| *Abuse of Authority* | unlawful entry – substantiated against officers 1, 2 and 3 |
| *Abuse of Authority* | excessive force – substantiated against officer 2 |
| *Abuse of Authority* | unlawful seizure of property – not substantiated |
| *Neglect of Duty* | improper care and handling of seized property – not substantiated |

A discipline authority's decision is final and conclusive unless the Commissioner considers there is a reasonable basis to believe the decision is incorrect. Please note the data contained in the following report may vary slightly from previously released statistical reports. Where differences exist, it can be assumed that the most current data release reflects the most accurate and up-to-date data.

## FILES OPENED

### Yearly Comparisons (past 5 years)



# STATISTICAL REPORTS

There was an increase of 14% in the number of files opened in 2015/2016 as compared to the previous year. Most of this increase is attributed to an increase in the number of monitor files. Monitor files include reportable injuries. These files are held open until a report is received from the police. The matter is then reviewed and a decision is made as to whether an ordered investigation is required. If no action is deemed necessary, the file is concluded as "reviewed and closed". In 2015/2016, the OPCC opened 422 monitor files compared to 304 the year before.

## Year- By-Year Comparisons by Department

| Department | 2011/2012 | 2012/2013 | 2013/2014 | 2014/2015 | 2015/2016 |
|---|---|---|---|---|---|
| Abbotsford | 90 | 93 | 105 | 83 | 81 |
| Central Saanich | 10 | 9 | 6 | 10 | 5 |
| CFSEU | - | 1 | 1 | 3 | 2 |
| Delta | 66 | 70 | 46 | 60 | 58 |
| Nelson | 13 | 7 | 12 | 14 | 8 |
| New Westminster | 58 | 63 | 48 | 73 | 62 |
| Oak Bay | 3 | 5 | 5 | 7 | 8 |
| Port Moody | 24 | 25 | 27 | 24 | 31 |
| Saanich | 59 | 64 | 54 | 77 | 120 |
| SCBCTAPS | 75 | 72 | 52 | 46 | 85 |
| Stl'atl'imx | 1 | 6 | 1 | 4 | 1 |
| Vancouver | 544 | 596 | 539 | 529 | 600 |
| Victoria | 113 | 153 | 134 | 113 | 132 |
| West Vancouver | 41 | 46 | 33 | 33 | 37 |
| **TOTAL** | **1097** | **1210** | **1063** | **1076** | **1230** |

The Vancouver Police Department and the Victoria Police Department consistently have the greatest number of files opened each fiscal year. These areas also have higher population counts and more sworn police officers as compared to the other municipalities.

# COMPLAINT CATEGORIES

| | |
|---|---|
| REGISTERED COMPLAINTS | Public trust complaints about a police officer's conduct or actions that affect a member of the public. |
| QUESTIONS OR CONCERNS | If a member of the public has a question or concern about a municipal police officer's conduct, but does not wish to file a registered complaint, he or she may contact a municipal police department directly. The member of the municipal police department who receives the question or concern must inform the professional standards section of the involved municipal police department. The professional standards section must record the question or concern and forward a copy of the record, along with how it was resolved, to the Office of the Police Complaint Commissioner for review. |
| ORDERED INVESTIGATIONS & MANDATORY EXTERNAL INVESTIGATIONS | Complaint investigations may be ordered by the Commissioner, whether requested by a department or as a result of information received from any source that raises concerns about officer misconduct. The *Police Act* also requires the Commissioner to order a mandatory external investigation into any incident resulting in serious harm or death. |
| MONITOR FILES | Opened when information is received by the OPCC from the police, including reportable injuries, or from other sources, such as media reports, that may require an investigation pursuant to the *Police Act*. Typically, these are incidents that are serious in nature or that have generated media attention but no potential disciplinary defaults have yet been identified. These files are held open until a report is received from the police. The matter is reviewed and a decision is made as to whether an Ordered Investigation is required. If no action is deemed necessary, the file is concluded as "reviewed and closed". |
| INTERNAL DISCIPLINE FILES | Involve performance management issues or employer/employee concerns that do not affect members of the public; are not the subject of an admissible complaint; and no overriding public interest in proceeding with the matter as a public trust matter. |
| SERVICE OR POLICY FILES | Involve the quality of a police department's service to the community or regarding their operating policies. |

*All adjudicative decisions are available on the OPCC website at www.opcc.bc.ca.*

# COMPLAINT TYPES

Files Opened by Type (past five years)

| Types of Files | 2011/2012 | | 2012/2013 | | 2013/2014 | | 2014/2015 | | 2015/2016 | |
|---|---|---|---|---|---|---|---|---|---|---|
| Internal Discipline | 47 | 4% | 32 | 3% | 14 | 1% | 16 | 1% | 11 | 1% |
| Monitor | 243 | 22% | 304 | 25% | 321 | 30% | 304 | 28% | 423 | 34% |
| Questions or Concerns | 232 | 21% | 243 | 20% | 113 | 11% | 135 | 13% | 207 | 17% |
| Mandatory External Investigations (s. 89) | 7 | 1% | 5 | <1% | 28 | 3% | 24 | 2% | 13 | 1% |
| Investigations Initiated by PCC | 2 | <1% | 16 | 1% | 26 | 2% | 20 | 2% | 10 | 1% |
| Investigations Requested by Department | 32 | 3% | 35 | 3% | 41 | 4% | 33 | 3% | 27 | 2% |
| Registered Complaints | 534 | 49% | 575 | 48% | 517 | 49% | 530 | 50% | 530 | 43% |
| Service or Policy[1] | - | - | - | - | 3 | <1% | 14 | 1% | 9 | 1% |
| **TOTAL** | | 1097 | | 1210 | | 1063 | | 1076 | | 1230 |

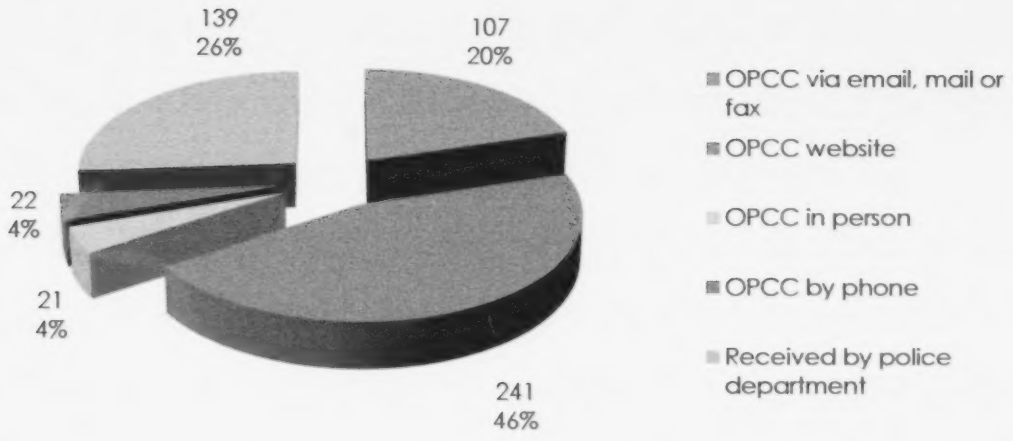
**The OPCC received the same number of registered complaints this year as the previous fiscal year. The number of investigations requested by police departments, initiated by the Commissioner and section 89 mandatory investigations decreased compared to the previous year. There has been a 53% increase in the number of Question or Concern files in 2015/2016 compared to the previous year.**

[1] Beginning in 2013/2014, the OPCC modified the way it reports *Service or Policy Complaints*. Statistical comparisons with earlier years is not yet possible.

Files Opened in 2015/2016 by Department & Category

| | TOTAL | Inadmissible Registered | Admissible Registered | Admissibility Decision Pending | Mandatory External Investigation | Ordered Investigation (Dept. Request) | Ordered Investigation (PCC Initiated) | Monitor | Question or Concern | Internal Discipline | Service or Policy |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Abbotsford | 81 | 29 | 11 | 4 | 0 | 3 | 0 | 27 | 4 | 3 | 0 |
| Central Saanich | 5 | 1 | 1 | 2 | 0 | 0 | 0 | 0 | 1 | 0 | 0 |
| CFSEU | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 0 | 0 | 0 |
| Delta | 58 | 6 | 8 | 0 | 1 | 2 | 2 | 30 | 7 | 2 | 0 |
| Nelson | 8 | 2 | 2 | 0 | 0 | 0 | 0 | 3 | 1 | 0 | 0 |
| New Westminster | 62 | 13 | 9 | 1 | 0 | 2 | 0 | 23 | 12 | 2 | 0 |
| Oak Bay | 8 | 1 | 1 | 0 | 0 | 0 | 0 | 1 | 5 | 0 | 0 |
| Port Moody | 31 | 2 | 3 | 0 | 0 | 1 | 0 | 5 | 20 | 0 | 0 |
| Saanich | 120 | 35 | 5 | 0 | 0 | 7 | 1 | 22 | 49 | 1 | 0 |
| SCBCTAPS | 85 | 12 | 12 | 1 | 0 | 3 | 0 | 27 | 28 | 2 | 0 |
| Stl'atl'imx | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Vancouver | 600 | 121 | 134 | 15 | 11 | 6 | 3 | 248 | 55 | 0 | 7 |
| Victoria | 132 | 53 | 35 | 1 | 1 | 2 | 3 | 27 | 8 | 0 | 2 |
| West Vancouver | 37 | 5 | 4 | 0 | 0 | 1 | 1 | 8 | 17 | 1 | 0 |
| TOTAL | 1230 | 281 | 225 | 24 | 13 | 27 | 10 | 423 | 207 | 11 | 9 |

How Registered Complaints Were Received in 2015/2016




There are a variety of ways to register a complaint against a municipal police officer or department. Complainants use the OPCC website most frequently to file a complaint, followed by filing a complaint directly with the police department. Police departments are required to forward all registered complaints and questions or concerns to the OPCC for assessment and review.

## ADMISSIBILITY

Admissibility of Registered Complaints Received in 2015/2016

The *Police Act* requires that all registered complaints must first be reviewed by the OPCC to determine whether they are admissible under Division 3, Public Trust of the *Police Act*. In order for a complaint to be deemed admissible, it must:

1. contain an allegation of conduct that, if substantiated, would constitute misconduct as defined by the Act;
2. be filed within one year of when the incident occurred; and
3. not be frivolous or vexatious.

A complaint deemed "inadmissible" under Division 3 could still be investigated under a different division of the *Police Act*. If the complaint contains allegations that concern a department's services or policies, it would be processed under Division 5 of the Act. If the complaint contains labour or management issues, it would be processed under Division 6 of the Act.

A registered complaint must also involve a municipal police department to be under the jurisdiction of the OPCC.

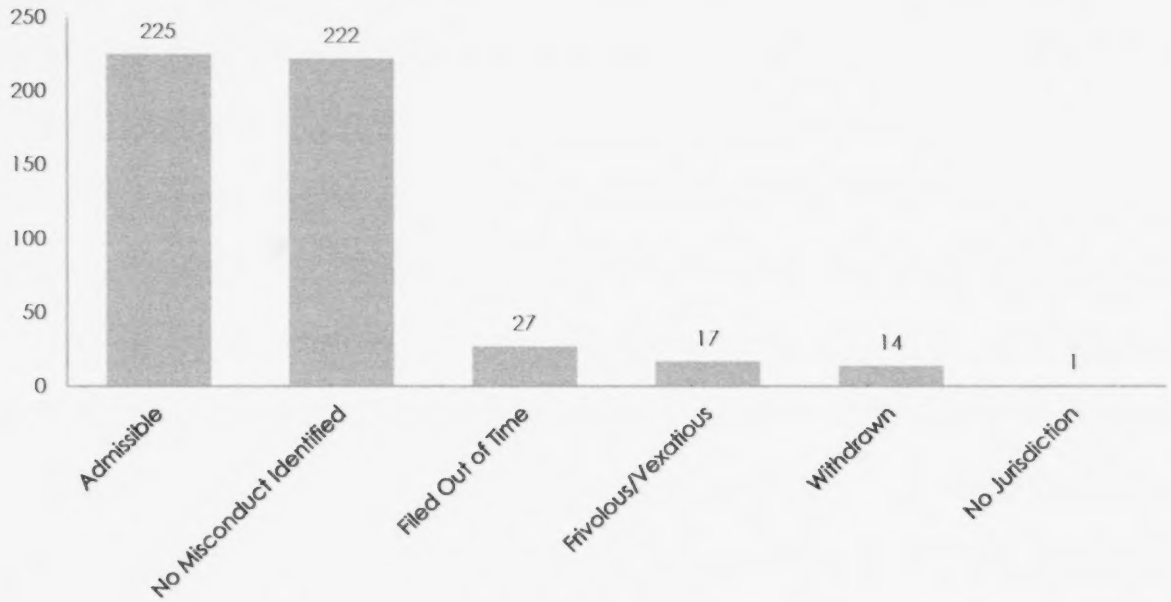
## Breakdown of Admissibility Reviews in 2015/2016

When conducting an admissibility review, the primary document relied upon is the complaint itself. However, if the information in the complaint is not clear, an OPCC analyst will contact the complainant to confirm the material aspects of the complaint. If necessary, the analyst may contact the originating police agency for further information in order to have context in which to assess the allegations and arrive at a principled decision regarding the admissibility of the complaint.

Analysts are careful not to weigh the evidence at this stage, but in exercising their gatekeeping function, they must ensure they have considered all the relevant circumstances which provide an accurate context to the matter.

With this important gatekeeping role, the OPCC has been able to ensure that those complaints which meet the admissibility criteria are forwarded to municipal police departments for alternative dispute resolution or an in-depth examination.

### Admissibility Assessments




A total of 506 admissibility assessments were completed in 2015/2016. In 44% of the assessments, there was no misconduct identified in the complaint. When a complaint is determined to be inadmissible, complainants receive a letter outlining the reason why their complaint was not admissible.[2]

[2] When this report was generated in April 2016, 24 registered complaints were undergoing an admissibility review and a determination of admissibility for those complaints had not yet been made. "Withdrawn" complaints here mean that a complainant withdrew his or her complaint prior to an admissibility assessment. "No jurisdiction" means that a complaint was determined to be admissible based on the conduct described, but through initial investigation, it was determined that a municipal police officer was not involved (e.g. by-law officer or jail guard).

## Admissibility Assessments (past five years)

| Breakdown of Registered Complaints by Fiscal Year | | | | | | | |
|---|---|---|---|---|---|---|---|
| Fiscal year | Admissible | Inadmissible | | | | | |
| | | No Misconduct Identified | Filed Out of Time | Frivolous/ Vexatious | Withdrawn | No Jurisdiction | Service or Policy Component Identified (Division 5) |
| 2011/2012 | 220 of 534 (41%) | 245 (46%) | 33 (6%) | 3 (1%) | 7 (2%) | 13 (2%) | 13 (2%) |
| 2012/2013 | 264 of 575 (46%) | 218 (38%) | 45 (8%) | 6 (1%) | 13 (2%) | 23 (4%) | 6 (1%) |
| 2013/2014 | 227 of 517 (45%) | 223 (43%) | 33 (6%) | 6 (1%) | 14 (3%) | 7 (1%) | 7 (1%) |
| 2014/2015 | 197 of 530 (37%) | 273 (51%) | 42 (8%) | 3 (1%) | 12 (2%) | 3 (1%) | - |
| 2015/2016 | 225 of 506 (45%) | 222 (44%) | 27 (5%) | 17 (3%) | 14 (3%) | 1 <1% | - |

The average admissibility rate for the past five fiscal years is **43%**. The majority of complaints are deemed inadmissible because the complainant has not identified an allegation of misconduct pursuant to section 77 of the *Police Act*.

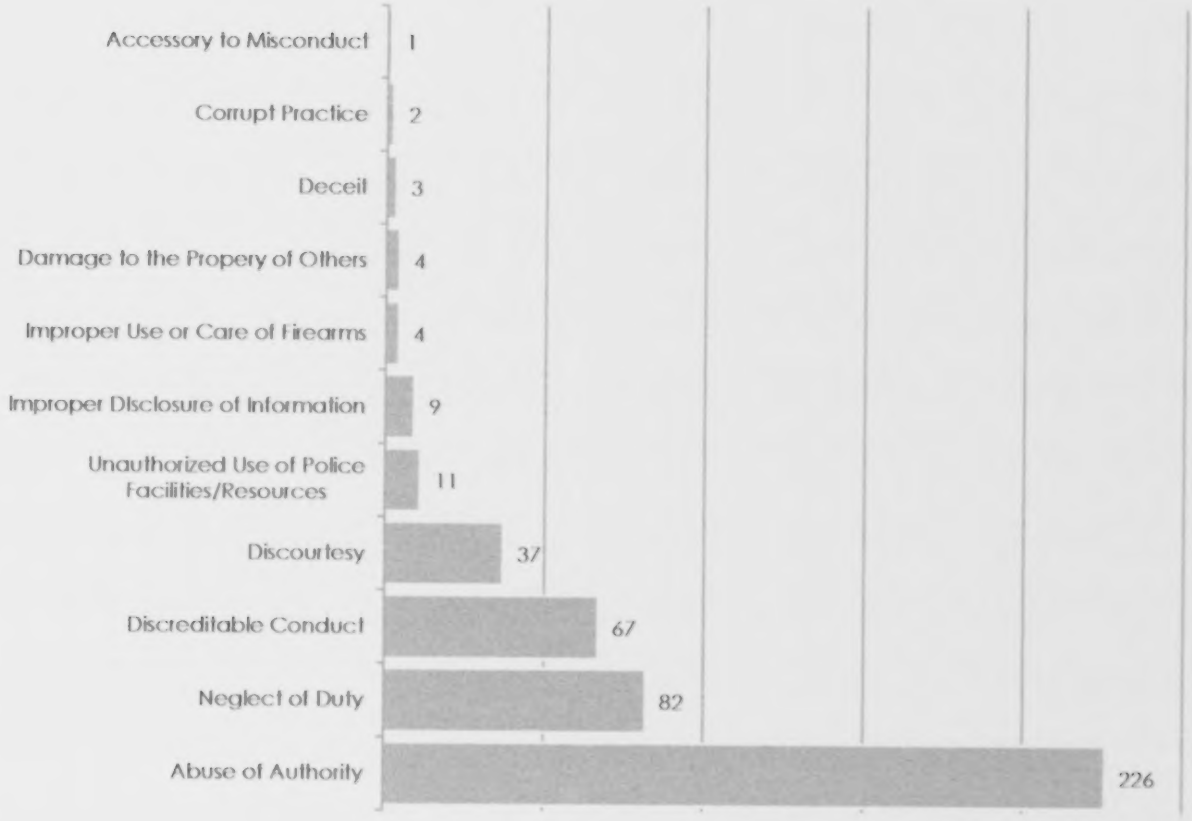
## Types of Misconduct Alleged

Once a complaint is deemed admissible or an investigation is initiated, allegations of misconduct are identified against individual officers. The *Police Act* identifies 13 public trust allegations:

1. *Abuse of Authority*
2. *Accessory to Misconduct*
3. *Corrupt Practice*
4. *Damage to Police Property*
5. *Damage to Property of Others*
6. *Deceit*
7. *Discourtesy*
8. *Discreditable Conduct*
9. *Improper Disclosure of Information*
10. *Improper Off-Duty Conduct*
11. *Improper Use or Care of Firearms*
12. *Misuse of Intoxicants*
13. *Neglect of Duty*

From April 1, 2015, to March 31, 2016, the OPCC identified **446** public trust allegations and forwarded them to the respective police department for investigation. Please note that these are only allegations and do not reflect whether the allegations were substantiated. Allegations of *Abuse of Authority* (e.g. arrest or detention without good and sufficient cause or unnecessary use of force) account for half (51%) of all allegations forwarded for investigation, followed by *Neglect of Duty* (18%) (e.g. inadequate investigation, failure to provide Charter rights, or failure to comply with departmental policy).

## Types of Alleged Misconduct for 2015/2016




**NOTE:**

- These are allegations arising from admissible registered complaints and ordered investigations pursuant to Division 3 (Public Trust).
- A single registered complaint or ordered investigation may contain more than one allegation of misconduct.
- The subsequent investigation may determine there is more than one police officer associated to the identified misconduct.
- "Unauthorized Use of Police Facilities/Resources" is a subsection of "Corrupt Practice". The OPCC distinguishes this as a separate category of misconduct in order to better capture statistics pertaining to this conduct.

# ALLEGATIONS CONCLUDED

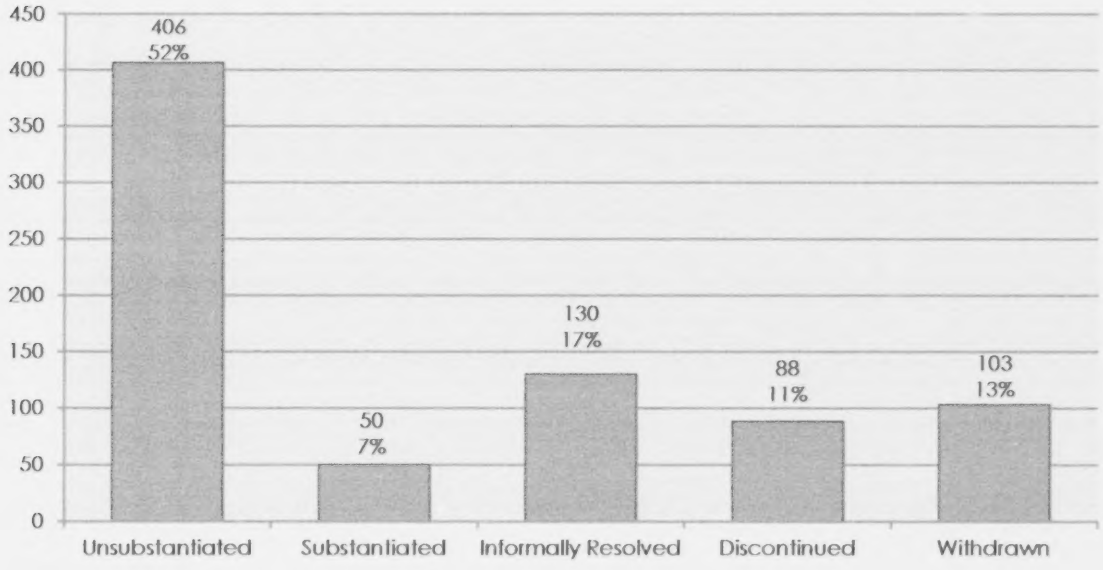
April 1, 2015, to March 31, 2016

The following figures refer to allegations, not complaint files as in the previous section. A complaint file may contain many allegations of misconduct, involving multiple police officers, and have a variety of outcomes. Therefore, straight comparisons between opened files and concluded allegations cannot be made. Allegations of misconduct against an officer may result in one or more of the following outcomes:

| | |
|---|---|
| Withdrawn | A complainant may withdraw his or her complaint at any time in the process; however, the Commissioner may direct that the investigation continue or order an investigation. |
| Informally Resolved | A complaint may be informally resolved pursuant to Division 4 of the *Police Act*. Both parties must sign a Consent Letter outlining the agreement and both parties have 10 business days in which to change their minds. The OPCC reviews all informal resolutions and if the Commissioner determines it is inappropriate or inadequate, the resolution is set aside and the investigation continues. |
| Mediated | A complaint may be resolved through mediation, facilitated by an independent professional mediator. If no agreement can be reached, the investigation continues. The Commissioner has the authority to direct a complainant to attend mediation, and similarly, the Chief Constable of a department can order the officer to attend. |
| Discontinued | The Commissioner may discontinue an investigation into allegations of misconduct if it is determined that further investigation is neither necessary nor reasonably practicable, or if it is found that the complaint is frivolous, vexatious or made knowing the allegations were false. |
| Substantiated | If, following an investigation, the discipline authority determines the allegation appears to be supported by the evidence, the discipline authority must then decide on appropriate disciplinary and/or corrective measures to impose. The officer may accept the proposed measures at a prehearing conference or the matter may proceed to a discipline proceeding. The Commissioner may arrange for a Public Hearing or Review on the Record by a retired judge if it is in the public interest. The officer also has an automatic right to a Public Hearing or Review on the Record if the proposed penalty is a reduction in rank or dismissal. |
| Not Substantiated | Following an investigation, the discipline authority may determine there is not sufficient evidence to support the allegation of misconduct. All complaints determined to be unsubstantiated are reviewed by the OPCC and, if it is determined that there is a reasonable basis to believe the discipline authority's decision is incorrect, the Commissioner may appoint a retired judge to conduct a review of the investigation and arrive at a decision. |

## Allegations Concluded in 2015/2016

Between April 1, 2015, and March 31, 2016, the OPCC concluded 777 allegations.




A total of 456 allegations (58% of all concluded allegations) were forwarded to a Discipline Authority for a decision to determine whether misconduct has been proven. The Discipline Authority bases his or her decision on the Final Investigation Report prepared by the department's professional standards investigator and the evidence and records referred to in the report. The finding of misconduct is based on a ***balance of probabilities*** which is similar to the standard used in civil proceedings. The remaining 42% of allegations were informally resolved, discontinued or withdrawn. Of those complainants who withdrew their complaints, 34% reported that they were satisfied, 26% withdrew for personal reasons, 22% lost interest in the complaint process, 10% were frustrated with the complaint process and 8% reported that they were pursuing other avenues.

## Year-By-Year Comparisons of Concluded Allegations

| | Number of Allegations Concluded | Discontinued | Informally Resolved/ Mediated | Withdrawn | Substantiated | Unsubstantiated |
|---|---|---|---|---|---|---|
| 2011/ 2012 | 807 | 110<br>14% | 174 of 721<br>24% | 51<br>6% | 55<br>7% | 417<br>52% |
| 2012/ 2013 | 704 | 64<br>9% | 170 of 643<br>26% | 88<br>13% | 51<br>7% | 331<br>47% |
| 2013/ 2014 | 942 | 116<br>12% | 210 of 812<br>26% | 81<br>9% | 70<br>7% | 465<br>49% |
| 2014/ 2015 | 569 | 56<br>10% | 75 of 464<br>16% | 86<br>15% | 55<br>10% | 297<br>52% |
| 2015/ 2016 | 777 | 88<br>11% | 130 of 679<br>19% | 103<br>13% | 50<br>6% | 406<br>52% |

## Allegations Forwarded for Discipline Authority Decision

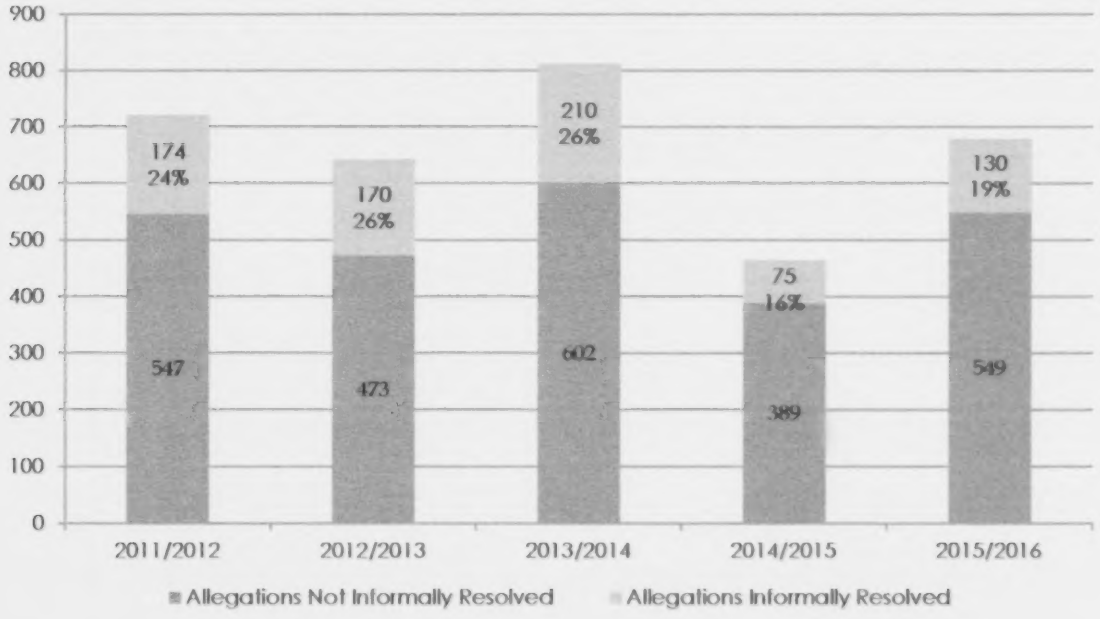
| | Number of Allegations Concluded | Number of Allegations Forwarded for DA Decision | Substantiated | Unsubstantiated |
|---|---|---|---|---|
| 2011/ 2012 | 807 | 472<br>58% | 55<br>12% | 417<br>88% |
| 2012/ 2013 | 704 | 382<br>54% | 51<br>13% | 331<br>87% |
| 2013/ 2014 | 942 | 535<br>57% | 70<br>13% | 465<br>87% |
| 2014/ 2015 | 569 | 352<br>62% | 55<br>16% | 297<br>84% |
| 2015/ 2016 | 777 | 456<br>59% | 50<br>11% | 406<br>89% |

There was an increase of 37% in the number of allegations concluded this year compared to the previous year. Disciplinary and corrective measures under the *Police Act* range from advice to future conduct, counselling/treatment, verbal or written reprimand, suspension, reduction in rank, or dismissal. The most frequent disciplinary measures imposed this year were suspensions followed by written reprimands. Discipline authorities must consider a number of aggravating and mitigating factors when coming to a decision on an appropriate disciplinary or corrective measure. Of the 456 allegations forwarded to the discipline authority for a decision, 11% were substantiated.

# ALTERNATIVE DISPUTE RESOLUTION

## Informal Resolution

Under the *Police Act*, only registered complaints are eligible for Alternative Dispute Resolution. Between April 1, 2015, and March 31, 2016, the OPCC reviewed and approved informal resolution agreements relating to 130 allegations of misconduct, or 19% of all allegations contained in registered complaints.




Based on the current legislation, it is the police department which decides whether to attempt to resolve a complaint using informal resolution. The Commissioner cannot direct police departments or complainants to use Alternative Dispute Resolution. The OPCC is working closely with police departments to encourage the use of Alternative Dispute Resolution as a meaningful resolution to complaints. Mechanisms have been put in place to track the success rate of those complaints where informal resolution is determined to be suitable and the OPCC is now tracking why some informal resolutions do not succeed. It is hoped that this information will assist in improving the Alternative Dispute Resolution Program.

## Mediation

Mediation is a process for resolving disputes between a complainant and an officer with the assistance of a neutral professional mediator.

There were no mediations held between April 1, 2015, and March 31, 2016.

# REPORTABLE INJURIES

The *Police Act* requires departments to report all incidents where an individual in the care or custody of the police suffers a "reportable injury" which is one requiring medical treatment. These "reportable injuries" are opened by our office as Monitor Files until it is determined whether an investigation will be conducted.

Reportable Injuries by Year and Type

| | 2011/2012 | 2012/2013 | 2013/2014 | 2014/2015 | 2015/2016 |
|---|---|---|---|---|---|
| | 238 Notifications/ 264 Uses of Force | 284 Notifications/ 313 Uses of Force | 331 Notifications/ 355 Uses of Force | 311 Notifications/ 384 Uses of Force | 408 Notifications/ 486 Uses of Force |
| Arwen/Bean Bag | 17 | 11 | 15 | 23 | 21 |
| Baton | 7 | 6 | 6 | 4 | 6 |
| Dog Bite | 108 | 101 | 84 | 102 | 180 |
| Empty Hand | 58 | 55 | 58 | 107 | 104 |
| Firearm | 2 | 2 | 2 | 5 | 4 |
| Motor Vehicle Accident | 8 | 8 | 18 | 18 | 26 |
| OC Spray (pepper spray) | 3 | 3 | 3 | 5 | 4 |
| Other[3] | 18 | 60 | 67 | 28 | 28 |
| Pre-Existing | 3 | 17 | 15 | 21 | 20 |
| Self-Inflicted | 34 | 42 | 80 | 63 | 79 |
| Taser | 6 | 8 | 7 | 8 | 14 |

Investigation Orders Following Review of Reportable Injuries

| | 2011/2012 | 2012/2013 | 2013/2014 | 2014/2015 | 2015/2016 |
|---|---|---|---|---|---|
| Mandatory Investigations | 7 | 5 | 28 | 24 | 13 |
| PCC Ordered Investigations | - | 10 | 9 | 5 | 3 |
| Department Request Investigations | 2 | 4 | 1 | 1 | 1 |
| Registered Complaints | 13 | 5 | 9 | 7 | 8 |

[3] "Other" are incidents where a person is in medical distress with the cause being unknown.

There has been a notable increase in the number of reportable injury notifications reported to the OPCC and mandatory external investigations since the implementation of the Independent Investigations Office (IIO) in September 2012. There has been a 31% increase in notification compared to last year. This year, 13 reportable injury notifications, or 3% of all reportable injuries, met the definition of *serious harm*[4] under the *Police Act* and resulted in a mandatory external investigation under the *Police Act*. Dog bite injuries from the use of police service dogs were the most frequent reportable injury reported to this office, accounting for 37% of all injuries in 2015/2016. This is a significant increase from last year where dog bite injuries accounted for 27% of reportable injury files. There were four reportable injuries involving a firearm as compared to five in the previous year. Very few people who suffer a reportable injury file a registered complaint.

APPOINTMENT OF A NEW DISCIPLINE AUTHORITY [s.117]

If, following an investigation, the discipline authority determines that the conduct of the officer did not constitute misconduct, and the Commissioner believes there is a reasonable basis to believe the decision is incorrect, the Commissioner may appoint a retired judge to review the matter.

**Between April 1, 2015, and March 31, 2016, the Commissioner appointed a retired judge to act as a new discipline authority in *two* matters.**

REVIEW ON THE RECORD [s.141]

Following a discipline proceeding, the Commissioner has the discretion to order a review of the proceeding where there is a reasonable basis to believe that the decision of the discipline authority is incorrect, or it is in the public interest to review the matter.

**Between April 1, 2015, and March 31, 2016, the Commissioner appointed a retired judge to conduct a review on the record in relation to *one* matter.**

PUBLIC HEARING [s.143]

Public Hearings remain an option for the Commissioner if he believes such a review of a *Police Act* matter is required in the public interest. Public Hearings are conducted by retired judges, are open to the public and evidence is presented under oath.

**Between April 1, 2015, and March 31, 2016, the Commissioner did not order a Public Hearing.**

All decisions from these three adjudicative avenues are available to the public through the OPCC website at www.opcc.bc.ca. As well, there is a schedule of current Public Hearings indicating the date and place of the hearings. All Public Hearings are open to the public to attend.

[4] *serious harm* means injury that may result in death, may cause serious disfigurement, or may cause substantial loss or impairment of mobility of the body as a whole or of the function of any limb or organ.

# RESOURCES

1. Office of the Police Complaint Commissioner website www.opcc.bc.ca
2. OPCC brochures:
    i. *Let Us Help You Guide*
    https://www.opcc.bc.ca/publications/printable_brochures/Let_Us_Help_You.pdf
    ii. *General Information*
    https://www.opcc.bc.ca/publications/printable_brochures/general_information_brochure.pdf
    iii. *Alternative Dispute Resolution*
    https://www.opcc.bc.ca/publications/printable_brochures/adr_brochure.pdf
    iv. *Complaint Form*
    https://www.opcc.bc.ca/form/index.asp
3. *Police Act* of British Columbia http://www.bclaws.ca/civix/document/id/complete/statreg/96367_01
4. Independent Investigations Office of British Columbia www.iiobc.ca
5. Other Canadian oversight agencies https://www.opcc.bc.ca/outreach/oversight_agencies.html

# APPENDIX: RECOMMENDATIONS TO POLICE BOARDS

VANCOUVER POLICE DEPARTMENT
Restaurant Watch Program

Registered Complaint – 2015-10584-01

The Office of the Police Complaint Commissioner received a Service or Policy Complaint in relation to the Vancouver Police Department's (VPD) *Restaurant Watch* program (herein the Program). The complainant reported that members of the VPD Gang Unit approached him while he was at a restaurant and informed him that he was a criminal, referring to a 25-year-old firearms conviction that took place in another country. The complainant did not believe that the Program should apply to him as he was now a successful businessman and had resided in Canada for 20 years without having any additional "blemishes on his criminal record."

The complainant believed that the Program was fundamentally flawed, overly broad and afforded too much discretion to police. Specifically, the complainant believed that applying the Program to his circumstances was an overreach of the Program and did nothing to further its stated goals – the safety of patrons, staff and the public. The OPCC learned that the VPD has no policy related to the Restaurant Watch program (also known as Bar Watch or the Inadmissible Patron Program). The OPCC was provided with the *Restaurant Watch Agreement*, which is signed by the VPD and participating establishments.

The OPCC acknowledges the fundamental principles of the Program as a public safety initiative. However, having reviewed this complaint as well as other similar complaints, the Commissioner identified issues with respect to the inconsistent application of the Program by officers due to a lack of clear and objective policy to guide their approach.

Pursuant to section 173(1)(b) of the *Police Act*, the Commissioner identified the need for the VPD to create clear and consistent policy in the following areas: the jurisdiction of the officers acting pursuant to the Program; the criteria upon which patrons are deemed inadmissible; and the application of the *Trespass Act* to the program.

**1. Jurisdiction**

A review of the Program agreement in general demonstrated that the VPD and restaurant/bar owners participating in the Program enter into a private contract. A key component of that contract is that it "authorizes sworn members of the VPD and its partner agencies to act on behalf of the owner" to: deny entry and/or remove inadmissible patrons; request valid identification; and escort persons who refuse to provide identification out of the premises.

Based on the Restaurant Watch/Bar Watch Agreement and the provisions of the *Trespass Act*, it appeared that police officers act as delegates of the occupier. This relationship places them in a conflict of interest whereby they are simultaneously acting as private citizens and peace officers. The Commissioner's review of this complaint, as well as similar complaints, revealed that this conflict can become particularly problematic in circumstances where officers conduct arrests pursuant to section 129 of the *Criminal Code* for obstructing a peace officer, although they are acting pursuant to the authority of an occupier – a private authority.

The Commissioner recommended that the Board create policy that clearly identified the jurisdiction of police officers when enforcing the *Trespass Act* in the context of the Program. That policy should encourage a consultation process with owners/occupiers in which officers advise the occupier of an alleged inadmissible patron and ask if the occupier wants that patron to leave the premises.

**2. Program Criteria**

The Program itself is broad in scope and without clear criteria and objective policy regarding when a patron meets the threshold for ejection as an inadmissible patron. According to the Restaurant Watch/Bar Watch Agreement criteria, the VPD may eject a person as an inadmissible patron who:

- is an organized crime and/or gang member;
- is an associate of organized crime and/or gangs;
- is involved in the drug trade;
- has a history of serious and/or violent criminal activity; or
- has a history of firearms offenses.

In reviewing the report prepared for the Board, the Commissioner noted that the professional standards investigator created another criterion not part of the above list. The complainant was the subject of recent (within the past five years) police documented incidents based on reliable information. This analysis did not clarify when those incidents occurred or how they objectively satisfied the criteria to become an inadmissible patron. It is the opinion of this office that this lack of clearly defined criteria has led to an inconsistent application of the Program. Therefore, the Commissioner recommended that the Board create clear, objective policy in terms of the threshold as it relates to when the police may eject patrons pursuant to the above criteria, including, but not limited to, explanations of:

a) what constitutes an "associate";

b) what constitutes "involvement in the drug trade";

c) what constitutes "serious and/or violent criminal activity";

d) what type of incidents/offenses are relevant "police-documented incidents";

e) the required classification of a person in relation to a "police-documented incident" (suspect, complainant, other?);

f) whether suspicion, charges or a conviction is necessary with respect to meeting any criteria of inadmissible patrons;

g) the time frame for which a person's "history" is sufficiently recent to be relevant; and

h) clear, objective guidance regarding what attention is to be attributed to a person's history.

**3. Application of the *Trespass Act***

A further area of confusion is in relation to the application of the BC *Trespass Act*. According to the Report forwarded to our office, the "Restaurant Watch's legislative authority is found in the BC *Trespass Act*, which authorizes the owner of a property, or their designate, to compel a person to leave the property. If a person does not leave the premises as soon as practicable, after being told to leave or attempts to re-enter, the person is deemed to have committed an offense."

In similar complaints involving the VPD, officers have demanded government-issued identification, citing the Restaurant Watch/Bar Watch Program as their authority to do so. Officers then conduct database queries of the individuals to determine if they are inadmissible patrons. The demand for government-issued identification appears to be based on the Program's "Restaurant Watch Authorization Agreement (Operator's Copy)", which is signed by occupiers to authorize the VPD and partner agencies to:

> *"...request and be provided with, valid identification from certain persons in the premises..."; and*
>
> *"instruct those specific persons from paragraph (2) who refuse to provide identification, that they will no longer be served and to escort those specific persons out of the premises as soon as reasonably practicable."*

Consistent with the Supreme Court of Canada decision in *R. v. Moore*, [1979] 1 S.C.R., the *Trespass Act* does not require patrons to provide government-issued identification; only their correct name and address. Furthermore, patrons are only required to provide their correct name and address when they:

i. enter premises that are enclosed land;

ii. enter premises after receiving notice that entry is prohibited;

iii. continue engaging in a prohibited activity after receiving notice that the activity is prohibited; or

iv. fail to leave the premises as soon as reasonably practicable after being directed to leave the premises by the occupier or authorized person. (see *Trespass Act*, RSBC 1996 ch. 462, sections 4 and 8)

The Commissioner is concerned with a practice of demanding government-issued identification absent a legislated or common law authority to do so, as such a practice may be considered akin to a street check or "carding", an issue that has been raised with other police boards in Canada, most notably in Ontario. A recent submission by the Ontario Ombudsman's Office on street checks criticized the practice as a violation of human rights and recommended safeguards to protect those rights if the practice was to continue. The Ontario Provincial Government plans to create policy to ensure the practice is free from bias and done in a way to promote public confidence.

The Commissioner also noted that similar VPD complaints involving the Program indicate that there was some confusion regarding powers of arrest. Some officers have arrested individuals for obstruction pursuant to section 129 of the *Criminal Code*, whereas other officers have arrested individuals pursuant to section 10 of the *Trespass Act*. Both scenarios involve officers citing a failure to provide government-issued identification as grounds for the arrest.

The Commissioner recommended that the Board outline clear policy on the application of the *Trespass Act* to the Program, including, but not limited to:

i. authority and procedures for requesting a patron to identify themselves;

ii. authority and procedures conducting an arrest pursuant to the *Trespass Act*; and

iii. application of section 129 of the *Criminal Code* to the Program, including guidance on whether that section may be utilized and, if so, in what circumstances.

**4. Patron Information**

The Commissioner also learned that all ejections from establishments under the Program are documented in PRIME. The retained data could have a long-lasting, significant negative impact on an individual, yet it did not appear that the VPD has policy to ensure that the information was accurate and reliable. Nor was there a process whereby an ejected individual may appeal the ejection or their identification under the Program if they believe they had been unjustly evaluated. The Commissioner recommended that the Board create clear policy with regard to obtaining and retaining information about persons identified under the Program, including, but not limited to:

a. a review of the process to ensure that persons have been appropriately identified under the Program and, if so, that the information is accurate and reliable; and

b. a review of the process whereby persons can appeal their identification and the retention of that identification on PRIME.

At the time this report was generated this issue remained outstanding.

VANCOUVER POLICE DEPARTMENT — Registered Complaint – 2015-10713
Mailing of Sensitive Materials

At the request of another policing agency, a member of the VPD assisted in interviewing a complainant who was the victim of a sexual assault. The complainant resided in Vancouver and this type of assistance to an outside agency is not unusual in policing. The complainant provided an audio and video recorded statement which included detailed information of a very private and sensitive nature. The interview was recorded onto a DVD and the member sent the DVD by Canada Post regular mail to the outside police agency. The DVD was lost in the mail system and has never been recovered to this date. As a result, the complainant had to be re-interviewed regarding the incident. The complainant complained about the loss of the DVD containing the sensitive information.

During the course of the investigation, the member responsible stated that they had not been issued a USB, a portable hard-drive, or another suitable device to preserve such data and that they had not received any training by the VPD or by the Justice Institute of British Columbia. The member further advised that the VPD did not have policy relating to the handling of sensitive material in terms of the delivery of that information.

This lack of policy was echoed by the discipline authority and played an important role in his determination that the member had not committed misconduct for mailing the DVD via Canada Post. The discipline authority recommended that, "*the VPD Planning, Research and Audit Section review and amend our policies and procedures regarding the handling of video evidence and the mailing and tracking of DVDs and other evidentiary material.*"

The Commissioner agreed with the ultimate determination of the complaint as unsubstantiated, however, he did so for different reasons. The Commissioner determined that the member's conduct did not amount to *Neglect of Duty* because the use of Canada Post regular mail service, an unsecured method, was consistent with the organizational business practices of VPD at the time.

It is important to note that this organizational business practice is inconsistent with the responsibilities of public bodies pursuant to section 30 of the *Freedom of Information and Protection of Privacy Act* which states:

> *A public body must protect personal information in its custody or under its control by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or disposal.*

It was the Commissioner's view, regardless of the mode of delivery, with human error there always exists the potential for loss of the material. It was, therefore, incumbent upon the Vancouver Police Department to take measures to protect sensitive and personal information from unauthorized access, use, disclosure or disposal, particularly as it relates to mobile storage devices. With the advent of encryption technology, protective measures are readily accessible, inexpensive and sensitive information can remain secure and private if lost.

Therefore, the Commissioner exercised his discretion pursuant to section 177(4)(c) of the *Police Act* and recommended to the Vancouver Police Board that the Vancouver Police Department could benefit from the creation of clear policy relating to the collection, storage, transmission and delivery of personal information. The Commissioner noted that the VPD has a dedicated Information and Privacy Unit with significant expertise to draw upon as a resource.

At the time this report was generated this issue remained outstanding.

ABBOTSFORD POLICE DEPARTMENT — Service or Policy – 2015-10528

Property Disposal

The complainant reported that he was the subject of an arrest and his personal property was taken from him upon being booked into the jail cells at the police department. The complainant remained in custody until he was eventually transferred to Kent Institution, where he was incarcerated. The complainant subsequently wrote to the police department requesting that his personal effects be forwarded to him. The complainant was informed by way of letter that his effects were disposed of and that the police department had waited 90 days before doing so. The complainant stated that to his knowledge, the department had made no attempt to inform him that his property would be disposed of after 90 days if it was not claimed.

The OPCC forwarded this as a Service and Policy Complaint to the Abbotsford Police Board for action. Pursuant to section 172 of the *Police Act*, the Board copied the complainant and the OPCC on the concluding letter detailing the steps taken with respect to the complaint. The letter advised that "the property office was not in violation of any police department policies" and concluded the matter. The OPCC noted when reviewing the Board's letter that no assessment was made as to the adequacy and appropriateness of the existing policy or whether it required revision. Therefore, the Commissioner recommended, pursuant to section 173(1)(b) of the *Police Act*, that the Board further examine the APD's policy regarding the handling and disposing of personal property, in particular when the owner of the property was in custody or incarcerated, to determine if the policy was adequate and appropriate, or if it required revision. In addition, the Board was asked to consider whether the policy should include a requirement to notify an individual of the date on which their property would be disposed of and the process through which the property could be retrieved. Consideration was also to be given as to whether the length of time personal property was held, prior to disposal, was adequate.

As a result of the Commissioner's recommendations, the Abbotsford Police Department issued an Amended Training Directive to its members in relation to prisoner effects. This directive was to provide clarity to all Abbotsford Police Department staff around the handling and custody of prisoner effects, in particular, the handling of oversize effects. The directive provided, in part, that the booking officer would ensure that when a prisoner left the jail without their oversized effects, they would be provided with a completed and signed document titled *Safekeeping of Oversize Prisoner Effects*. This document provides the date and time the property was received, how long it would be stored, a list of the items inventoried, the police file number and the process to follow to facilitate the return of the items.

The OPCC was advised that the related department policy was being updated and that the prisoner effects procedures contained in the directive would be included. The OPCC was also informed that the department had reimbursed the complainant monetarily for his loss. The Commissioner commended the Board and police department for their initiative in contacting the complainant and reaching a settlement agreement with him regarding his property.

# APPENDIX: RECOMMENDATIONS TO POLICE BOARDS

Having had the opportunity to examine the Board's decision and the steps taken in addressing the issues raised, the Commissioner was satisfied with the outcome and would not be making any further recommendations for investigation, study, courses of action or changes to service or policy respecting this particular matter.

**VANCOUVER POLICE DEPARTMENT** — **Registered Complaint – 2015-10304**

*Investigative Detention and Street Checks*

A complainant reported that he and his friends were detained by members of the Vancouver Police Department (VPD) while on private property. Police officers searched the complainant and his friends and subsequently conducted database queries using their identification. The complainant and his friends were then released and the officers left. The complaint was determined to be admissible and forwarded on for investigation into two allegations of misconduct:

1. *Abuse of Authority*, pursuant to section 77(3)(ii)(B) of the *Police Act*, specifically that police detained the complainant and conducted a search of his person without permission.
2. *Discourtesy*, pursuant to section 77(3)(g) of the *Police Act*, specifically that an officer failed to behave with courtesy due in the circumstances towards a member of the public.

After investigation, the discipline authority determined that the evidence did not support either allegation of misconduct. The complainant was provided with a copy of the Final Investigation Report and the discipline authority's decision which provided the reasons for determining the allegations to be unsubstantiated. The complainant did not exercise his right to request that the Commissioner appoint a retired judge to review the file under section 117 of the *Police Act*. However, to promote accountability in the complaint process, all discipline authority decisions are reviewed by the OPCC, regardless of whether a request has been made.

The discipline authority had concluded that "the officers had an honest, but mistaken belief" and, therefore, were not reckless or acting in bad faith when they commenced their detention of the complainant and his friends. The fact that a Charter breach may have occurred is not necessarily determinative of whether misconduct has been proven pursuant to the *Police Act*.

The OPCC is mindful of the need to accord appropriate importance to the rights guaranteed under our *Charter of Rights and Freedoms* in order to protect any meaningful value to possessing these rights. After an assessment of the evidence in this case, the OPCC determined that the actions of the respondent members approached misconduct, but did not cross the threshold to misconduct. However, in reviewing this matter, the OPCC recognized a trend in complaint allegations involving the police practice of conducting street checks which were similar in nature to this case. The OPCC contacted the VPD and requested a copy of their current policy and procedures relating to investigative detention and/or street checks. The VPD advised that they did not currently have a policy but that a draft policy was potentially under development by their Planning and Research section.

Having reviewed the available evidence, it was apparent that the lack of policy, training and resources relating to the investigative detention of the complainant were factors in the conduct that was the subject of this investigation. Due to the frequency the members of the Vancouver Police come in contact with individuals of interest to them, all members should be well trained and proficient in the lawful application of current statute and case law with respect to the detention of individuals for investigative purposes.

The Commissioner was of the view that the Vancouver Police Department could benefit from the creation of clear and objective policy in the area of investigative detention and the practice of conducting street checks. Pursuant to section 177(4)(c) of the *Police Act*, the Commissioner recommended that the Vancouver Police Board examine and reconsider any policies or procedures relating to the practice of conducting investigative detention and street checks, specifically, that the Board:

1. Examine the current practice of street checks and the practice of investigative detention of individuals. Consideration should be given to the development of policies and/or procedures, consistent with the public interest, where it is determined that current policy and/or procedures are either non-existent or are not sufficiently adequate to prevent Charter breaches.

2. Research and review policies in other jurisdictions relating to the topic of investigative detention and street checks, specifically, review the current initiatives in Ontario with respect to regulating the practice of street checks and the proposed provincial policy which will develop as a result. These, and other sources of current research, may assist to provide general principles and act as a model towards the creation of similar policies relevant to the needs of the Vancouver Police Department.
3. Research and assess the adequacy of current training and development of Vancouver Police Department members with respect to the lawful practice of detaining individuals for investigative purposes. Where appropriate, develop and deliver in a timely manner, training topics aimed at increasing officer awareness and proficiency in the application of lawful practices to prevent a reoccurrence of similar incidents in the future.

At the time this report was generated this issue remained outstanding.

VANCOUVER POLICE DEPARTMENT — Service or Policy – 2015-10810

Marijuana Dispensaries

A complainant reported that the Vancouver Police Department was failing in its duty to maintain law and order by failing to shut down all marijuana dispensaries in the City of Vancouver. The Vancouver Police Board's Service & Policy Complaint Review Committee dismissed the complaint advising that the City of Vancouver had opted to regulate, rather than close, marijuana dispensaries. In this environment, and given the need to prioritize police resources, the Chief Constable determined that the VPD would take enforcement action only where there were overt public safety concerns.

After reviewing the Board's concluding letter and the associated investigation report, the Commissioner requested further information from both the Board and the police department. The Board provided copies of recommendations to Vancouver City Council for regulating Marijuana Retail Dealers and the Vancouver City Bylaws that were amended on June 24, 2015, as a result of those recommendations. The VPD provided copies of the materials referenced in the investigation report including: the VPD's September 2006 Drug Policy; the City of Vancouver's "Four Pillars" drug strategy; a Marijuana Enforcement Bulletin; and emails from VPD executive to all VPD Operations Inspectors and Acting Inspectors providing direction with respect to the VPD's position on enforcement of marijuana dispensaries. Having reviewed these materials, it was clear to the OPCC that the VPD played an important role in the City of Vancouver's approach to regulating marijuana dispensaries. Therefore, the Commissioner was of the view that the VPD could benefit from the creation of a clear and objective policy to assist officers in the exercise of their discretion and discharge of their respective duties.

Pursuant to section 173(1)(b) of the *Police Act*, the Commissioner recommended that the Board develop and implement policy that addressed the following:

1. A Vancouver Police enforcement strategy with respect to marijuana dispensaries that are licensed in accordance with City of Vancouver Bylaws.
    a. A detailed explanation of Vancouver Police enforcement priorities with respect to dispensaries, including, but not limited to:
        i. the criteria related to determining public safety concerns; and
        ii. the process necessary to engage in enforcement action.
2. The Vancouver Police Department's role in the City of Vancouver's Regulatory Framework, including maintenance and sharing of information with city officials involved in regulating licensed medical marijuana retailers.

In deciding whether to create new policy, the Board and the VPD considered the following factors:

- The City was at the early stages of implementing its bylaw and the impact was not yet known;
- Since the service or policy complaint was received, a new federal government has been elected and has reaffirmed its commitment to legalizing and regulating marijuana. It appeared, therefore, that marijuana would be legalized and regulated within a relatively short time; and
- The VPD Executive has clearly set out its expectations regarding marijuana dispensaries in a January 2015 Directive. Frontline officers must consult and receive approval from their District Commander and

the VPD Organized Crime Section before taking any enforcement action against a marijuana dispensary pursuant to CDSA offences.

The Board determined that the existing Directive was sufficient in all the circumstances and that it would be premature to develop a new policy given the factors set out above and the changing landscape around the issue of marijuana. However, the Board will revisit this matter when the impact of the City's new bylaw and pending federal legislative changes become clearer.

VICTORIA POLICE DEPARTMENT — Service or Policy – 2015-10891
Marijuana Dispensaries

A complainant reported that the Victoria Police Department was failing in its duty to maintain law and order by failing to shut down all marijuana dispensaries in the City of Victoria. The Victoria Police Board dismissed the complaint for the following reasons:

- While the activity of some dispensaries may be illegal, police enforcement is particularly complex due to a lack of a regulatory scheme in place for medical marijuana derivatives and, given the Supreme Court of Canada ruling in *R v. Smith*, selling them is not contrary to the Criminal Code of Canada; and the courts have clearly stated that there is a need to ensure effective access by legitimate users.
- Victoria City Council has directed staff to develop new regulations for the City's marijuana-related businesses.
- Individual police officers have the discretion to determine whether to arrest and charge individuals or to resolve the matter via alternative means; and the Chief Constable has discretion with respect to how limited resources are to be deployed and the Board supports its Chief Constable's decision to limit deployment of police resources in respect of marijuana dispensaries when there are public safety concerns.

After reviewing the Board's response, the Commissioner was of the view that the VicPD could benefit from the creation of a clear and objective policy in the area of enforcement as it related to marijuana dispensaries. Pursuant to section 173(1)(b) of the *Police Act*, the Commissioner recommended that the Board develop and implement policy that addressed the following:

1. A detailed explanation of Victoria Police enforcement priorities with respect to dispensaries, including, but not limited to:
    a. The criteria related to determining public safety concerns; and
    b. The process necessary to engage in enforcement action.

The Victoria Police Board responded by stating that the legislative framework for the production, sale and possession of medical marijuana outlined under Health Canada's Marijuana for Medical Purposes Regulation (MMPR) was admittedly not being followed by several businesses in Victoria. This was, in part, due to the premise that marijuana should be readily available to those who require it for medical purposes. That position finds its legal foundation in the recent decision of the Supreme Court of Canada in *R v. Smith* where it was declared that drug possession and drug trafficking laws are of no force and effect, to the extent that they preclude access to "cannabis derivatives" by those authorized to possess marijuana for medical purposes. Further, it remained unclear whether or not municipal bylaw authority could be properly used to regulate an activity prohibited by federal statute.

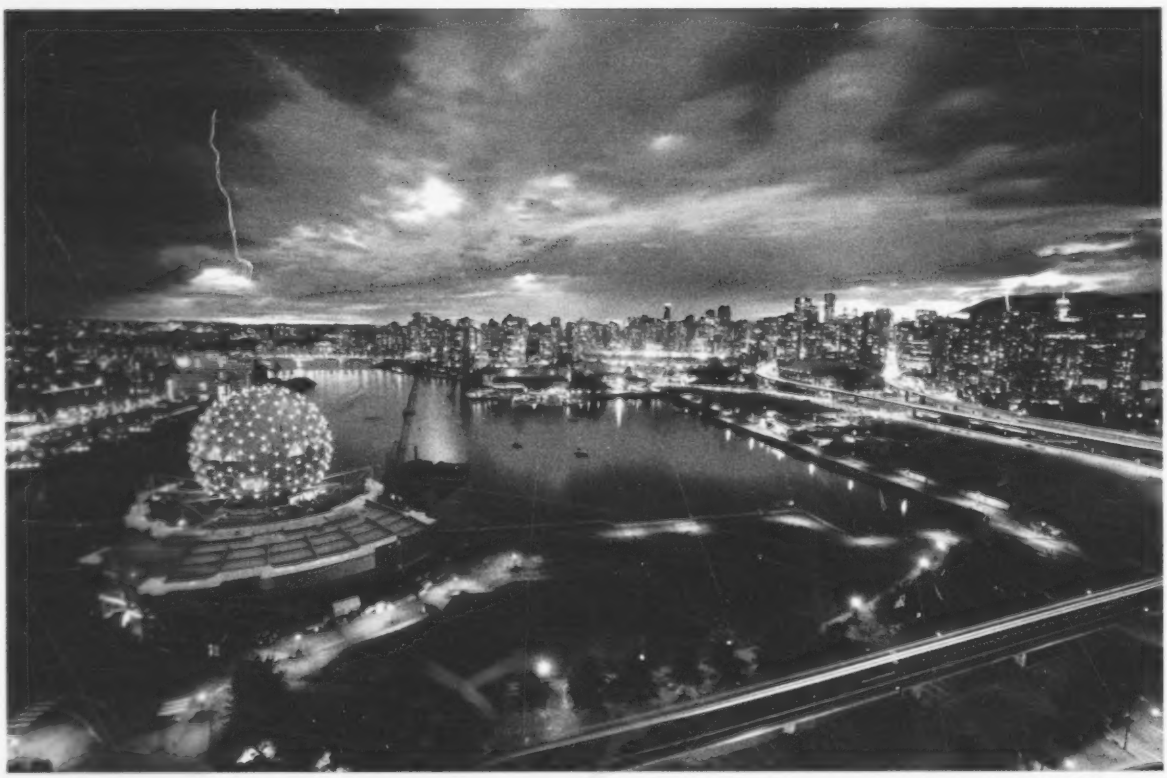
In an effort to obtain direction, in June 2015, the Victoria Police Department received a memorandum from the Public Prosecution Service of Canada outlining the scope and implications of the Supreme Court of Canada's decision in *R v. Smith*. This memorandum provided comprehensive guidance for police officers conducting investigations of dispensaries. This direction has been distributed to all Victoria Police officers. As well, in British Columbia, police officers are afforded considerable discretion in terms of whether an investigation should be initiated, as well as the manner in which an investigation should be conducted. A significant degree of deference is consistently afforded to police by the courts when it comes to the exercise of discretion in investigative matters.

The Board went on to state that the Victoria Police Department will continue to enforce all applicable laws related to drug trafficking, including marijuana dispensaries. When determining whether or not to initiate an

investigation, the department would carefully weigh several factors including the public interest, the proportionality between the impact of police action and the severity of the situation, the intrusiveness of the investigation and the resources required to successfully conclude it. In addition, over the last several months there have been significant changes worthy of note:

- The City of Victoria is in the process of developing a regulatory framework to address the operation of marijuana dispensaries.
- A new federal government has indicated that it will be creating legislation that will legalize the possession of marijuana.

After careful review of the correspondence from the Commissioner and an assessment of all information, the Victoria and Esquimalt Police Board concluded that no additional policy was necessary at this time. The Board will continue to revisit this matter as the challenging legal landscape in this area further develops.



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